

INTERNAL REVENUE SERVICE

PUBLIC TAX FORUM

Wednesday,
September 30, 2009

James R. Thompson Center
Auditorium - Lower Level
100 W. Randolph Street
Chicago, Illinois

The above-entitled matter commenced at the
hour of 9:59 o'clock a.m.

PRESENT:

MR. MARK ERNST, Moderator
Deputy Commissioner, Operations Support

MS. KAREN L. HAWKINS, Moderator
Director Office of Professional Responsibility

PANEL 1: SOFTWARE INDUSTRY PANEL

MR. MICHAEL CAVANAGH, Exec. Director, Council
for Electronic Revenue Communications
Advancement,

MR. LEONARD HOLT, Vice President, CCH Small Firm
Services - Business Development,

MR. JOHN SAPP, President, Sales & Marketing,
Drake Software,

MR. DAN MAURER, Senior Vice President and
General Manager, Intuit, Inc.,

PANEL 2: INDEPENDENT PREPARER PANEL

MS. AMY McANARNEY, Executive Director, The Tax
Institute,

MR. ANTONIO (TONY) ZABANEH, H&R Block
Franchisee,

MS. MARIANNE MOE, Jackson Hewitt Franchisee,

MS. CYNTHIA MacINTOSH, Empire Accounting and
Tax Service,

MR. RAYMOND W. HEINEN, Independent Preparer

1 DEPUTY COMMISSIONER ERNST: So, I want to,
2 first of all, introduce myself. I'm Mark Ernst, Deputy
3 Commissioner for Operations Support at the IRS, and I'll
4 be kind of moderating at least the first panel today. I
5 want to welcome everybody to our third public forum.
6 This is, as you know, part of the IRS' process looking
7 at tax return preparers and the process we're using to
8 assess sort of the state of the industry.

9 Since kicking this effort off by
10 Commissioner Shulman back in June, we have had up to
11 this point two public forums. This will be our third.
12 We have received hundreds and hundreds of comments from
13 people. We have had focused groups at all the tax
14 forums, the IRS Oversight Board has also conducted
15 focused groups at the tax forums. And beyond that, we
16 have heard from a whole range of different groups that
17 advise the IRS.

18 We have heard from a range of preparers.
19 We have heard from organizations that represent
20 preparers. We have heard from various government
21 oversight organizations. We have heard from various
22 states that are already active in the area of regulating
23 the tax preparation industry. And of course we have
24 heard from consumer advocates.

25 So, today, we have the final of our

1 public forums. We will be hearing from two different
2 panels. The first is our software publishers, folks who
3 are in many ways enabling both the professional industry
4 as well as computer software, so we'll hear from that
5 group first today. And then, we will have a second
6 panel which will represent unenrolled preparers, people
7 who are in fact both preparers themselves and manage
8 organizations that currently are unenrolled.

9 So, that's the schedule for today. We
10 will hold the first panel, I think this will go probably
11 about an hour or so. We'll take about a 15-minute break
12 is our plan. And then, we will reconvene and have our
13 second panel. The schedule is to take us until about
14 1:00 o'clock. So, that's our plan.

15 So, with that, let me get us kicked off.

16 And I want to introduce the panelists for our software
17 panel. What I will do is sort of just give you an
18 indication of who else is here with us, and then we'll
19 do specific introductions as people are preparing to
20 make their statement. What we're going to do is hear
21 from each of the panelists first, sort of prepared
22 comments, and then we'll go to our question format.

23 So, we have Mike Cavanagh, Mike is the
24 Executive Director of CERCA. CERCA is the Council for
25 Electronic Revenue Communication Advancement. Lenny

1 Holt, Leonard Holt (excuse me, Lenny), Lenny is the Vice
2 President for Business Development at CCH Small Firm
3 Services. John Sapp is Vice President for Sales &
4 Marketing at Drake Software. And finally, Dan Maurer is
5 the Senior Vice President and General Manager of the
6 Consumer Group at Intuit, a publisher of among other
7 things TurboTax.

8 So, with that, let me first introduce
9 Mike Cavanagh for his opening comments. Mike has served
10 as the Executive Director of the Council for Electronic
11 Revenue Communication Advancement or CERCA since 1996.
12 CERCA's membership encompasses almost the entire 1040
13 tax preparation software industry, the largest tax
14 preparation office chains, major American banks offering
15 bank products, and many of the major systems integration
16 companies that are performing electronic tax
17 administration contracts for the IRS. Mr. Cavanagh also
18 served as the founding member, or manager, excuse me, of
19 the Free File Alliance which we may want to talk about.
20 He has been the top staff executive for various groups
21 since 1981 including a ten-year stint as founding
22 executive director of the Electronic Mail Association.
23 With that, Mike, we'll look forward to your comments.

24 MR. CAVANAGH: Thank you. Mr. Ernst, Ms.
25 Hawkins, thank you very much. CERCA appreciates the

1 opportunity to speak in this forum.

2 Interestingly, CERCA, which was founded
3 in the early 1990's, came into existence at the
4 suggestion of the IRS to help promote the then early
5 stages of e-filing. CERCA meets with IRS officials on
6 regular and ongoing basis. Results of this dialogue
7 over the years have been significant joint efforts,
8 including the original creation of IRS e-file as we
9 mentioned, the design of IRS e-file marketing campaigns,
10 and most recently the creation of a joint security
11 working group.

12 CERCA has carefully studied the major
13 issues raised by the return preparer review. And simply
14 put, we believe that achieving excellence in income tax
15 compliance ensures not only mission fulfillment for the
16 American tax system but serves the best interests of
17 individual taxpayers.

18 **Professional income tax preparers.** In
19 CERCA's view, we believe that any regulatory strategy
20 should include standards for the registration,
21 education, testing and certification of anyone who holds
22 himself or herself out to the public as a third party
23 tax preparer, whether that service is for a fee or free
24 of charge as a volunteer or not-for-profit service.
25 This will assure a consistently strong foundation to

1 support taxpayer compliance in our complex income tax
2 system. The IRS should fully and directly engage the
3 private sector in the training and testing of tax
4 professionals and do so according to a national rubric
5 or standards to ensure that this oversight is uniform,
6 disciplined and meaningful. CERCA believes that a self-
7 regulatory organization, an SRO model, would be most
8 appropriate and serves the IRS best in the long run to
9 achieve this task.

10 **Income tax software.** The focus of this
11 review has been appropriately on the tax professional.
12 However, Commissioner Shulman and yourselves have
13 referred to the importance of tax software. We agree.
14 Clearly, the tools of modern tax software make today's
15 US tax system possible.

16 The American technology industry,
17 specifically the tax software industry, has
18 fundamentally changed the means of compliance with our
19 civic tax obligation. It has applied technological
20 innovation to simplify the difficult, to make sense of
21 the complex, to reduce the burden of work and save time,
22 and to increase accuracy and reduce costs. The intense
23 competition that exists within the industry has not only
24 created burden-reducing innovation but a price
25 environment that includes many low cost and no cost

1 options.

2 With respect to accuracy, beyond the
3 obvious need for accuracy of calculations, we know that
4 there are disputes about the interpretation of tax law
5 between well-intentioned advocates on different sides of
6 highly complex issues. It is for that reason that
7 interpretive disagreements have for many decades ended
8 up in tax court. But even taking the complexity into
9 account, it is fair to say that tax preparation software
10 has an extraordinary and well-deserved reputation and
11 track record for accuracy.

12 **General.** The Government Accountability
13 Office (GAO), in its February 2009 report "Many
14 Taxpayers Rely on Tax Software", stress the important
15 role that tax software plays while noting the high
16 quality of its performance. Nevertheless, the GAO
17 concluded that the IRS should exercise oversight of tax
18 software. CERCA agrees with this finding. IRS must
19 take a strategic approach that is focused and standards-
20 based in order to advance the public interest without
21 stifling either future innovation or the vitality of the
22 competitive marketplace that produces it. Conversely, a
23 software approach that would actually or effectively
24 have the government writing software would risk the
25 unintended consequence of damaging both innovation and

1 competition in tax software.

2 In recent weeks, CERCA was called upon by
3 IRS to nominate highly credentialed candidates for the
4 new IRS industry joint security working group. That
5 group is expected to be named shortly and begin
6 operation. We believe that this public-private
7 partnership approach to working on security issues
8 should achieve significant protection of the taxpayer.

9 We believe that a new joint working group
10 for software should be created as well. This would
11 follow the model of the IRS industry joint security
12 working group and be a structured activity that pulls
13 together and coordinates elements of the regulatory
14 framework that are relevant to what we are discussing
15 today. Such a joint working group can identify, address
16 and propose solutions, and produce a framework for the
17 key objectives talked about in the GAO report to ensure
18 proper tax software oversight by the IRS. We would
19 strongly urge that this new software joint working group
20 be able to examine and develop concepts necessary to
21 form an effective SRO which we believe would also be the
22 long-term solution for tax software oversight.

23 In an industry that encompasses both
24 large and small companies, there are many complex issues
25 that must be explored to develop an SRO best suited to

1 the regulatory tax ahead, an additional issue that has
2 been raised in these forums. In both previous public
3 forums, issues regarding refund anticipation loans
4 (RALs) have been raised. Over 20 million American
5 taxpayers annually engage a financial institution in
6 order to access professional tax preparation. Almost
7 half of these taxpayers choose to borrow against their
8 refunds. These bank products work to bring people to
9 professional taxpayers whose services they may not
10 otherwise be able to afford.

11 The bank product customer receives
12 significant value, gains access to professional tax
13 preparation, access to an account to receive their tax
14 refund, and if desired, a low fixed finance charge to
15 borrow the refund proceeds. Regarding compliance, there
16 is nothing inherent in a RAL that gives a taxpayer or a
17 tax preparer any incentive to fraudulently claim a
18 higher tax refund than the taxpayer deserves. Taking
19 away the RAL would not enhance compliance but would lose
20 an existing checkpoint where fraud can be caught and
21 reported as it is today.

22 So, in conclusion, CERCA looks forward to
23 continuing to participate in this process and to
24 assisting the IRS in this important task.

25 DEPUTY COMMISSIONER ERNST: Great. Thank you

1 very much. I appreciate that. Interesting thoughts.

2 I'm going to next turn to Leonard Holt.

3 Mr. Holt is currently Vice President of Business
4 Development for CCH Small Firm Services. Small Firm
5 Services is the publisher of two leading professional
6 tax software packages: ATX and TaxWise. Mr. Holt has
7 had various executive positions at SFS, Small Firm
8 Services, and its predecessor, Universal Tax Systems for
9 over six years. In his current role, he is responsible
10 for producing company growth through acquisitions,
11 partnerships and new product and market opportunities.
12 He is also responsible for managing the policy level
13 relationships with the Internal Revenue Service and with
14 the banks that participate in the tax related bank
15 product program. Beyond that, Mr. Holt had a 23-year
16 career at the IRS that ended in 1994 and we look forward
17 to your comments.

18 MR. HOLT: Thank you. And Mark's confusion on
19 my name is, everybody knows me as Lenny. But because of
20 some deep-seated psychological problem, I always put
21 Leonard in parens. So, if you want to talk to me later,
22 Lenny is fine.

23 I want to also thank Deputy Commissioner
24 Ernst and Director Hawkins for the opportunity to
25 participate. We think this is incredibly important and

1 we appreciate the opportunity to share our opinions with
2 you and with other people in the Service.

3 Our business has about 45,000 tax
4 preparation offices. Oh, by the way, I can't see you
5 with my glasses on, I can't hear with them off, so
6 that's why I'm reading it this way. There are about
7 45,000 tax offices that use one or another of our
8 products representing close to 100,000 paid preparers.
9 In addition, we provide the software that's used in the
10 VITA sites and the IRS walk-in offices and the JAG
11 offices and so forth which represents about another
12 10,000 offices and another 80,000 users. So, our impact
13 on the industry is pretty significant.

14 Because of the wide variety of training
15 and knowledge among the nearly 200,000 individuals who
16 use our programs, we have extensive experience
17 developing tax preparation software that can serve the
18 need of a wide range of customers. We have CPAs who use
19 our products and we have plenty of the seasonal tax
20 preparers, what we call the commercial and the
21 volunteers. They require different levels of training
22 and different levels of software that we can provide
23 with one or another of our products.

24 My comments today will focus on five
25 topics that are related but do have some variations.

1 And as a general comment, I'd say that this is extremely
2 important. Depending on which numbers you look at,
3 about 62 percent I think it is this year, Mark, 62
4 percent of the American taxpayers use a paid
5 professional to do their returns, which is that
6 significant. When I was with the IRS some years ago, it
7 was always around 50 percent. So, that number has grown
8 significantly over time which brings into even more
9 focus the need for paid preparers to be competent at
10 what they do.

11 So, let me start off by saying we are
12 very much in favor of testing and registering all tax
13 preparers. And we think that should be done with no
14 exceptions and it should be done at the preparer level,
15 not necessarily just the tax office. However, that's
16 going to be a major, major undertaking. Again, their
17 numbers are anywhere from half a million to a million
18 preparers out there that would be affected by this.

19 So, our suggestion is that the Service
20 decentralize that process through companies like mine,
21 provide us the parameters, provide us the standards, and
22 let us implement and report back to you so that we can
23 do this on a timely basis. The turnover in personnel at
24 seasonal tax prep offices is extremely high. So,
25 whatever provision is in place would have to be

1 something that could be implemented very, very quickly
2 so that a successful tax season could be had by all. We
3 don't think the IRS could devote the resources to do
4 this in as timely a manner as could be done if the
5 individual software companies are doing it, again to
6 your standards.

7 And also, we could do it ongoing. There
8 are going to be people who need to be tested and
9 registered in March, February, whenever. And we can
10 keep your database updated on it on a daily basis,
11 weekly basis, as opposed to doing it once a year that
12 might have to take place if the IRS takes this on
13 itself.

14 On preparer testing, very much the same
15 kinds of issues. We think it's important, but we also
16 think there's a lot of details that will need to be
17 addressed. What level of testing are we talking about?
18 Well, in my opinion and the opinion of our company, for
19 a person who serves as a professional tax preparer, they
20 have to demonstrate that they can in fact prepare a
21 1040. I think carrying it beyond the basic 1040 into
22 1120's or 1065's might be overkill. Most people who are
23 getting those kinds of returns prepared already know
24 that they're going to a competent professional. If
25 they're not, they'll change preparers. The individuals

1 though have so many choices in a paid preparer that I
2 think the time has come that there be some specific
3 requirements asked of the preparers to show that they
4 have the competence to do the job.

5 Much as with registration, again we think
6 that needs to be decentralized and let the industry do
7 that for this service. Using your subject matter in our
8 systems, we can administer this much more quickly. We
9 can keep records updated. There are a lot of
10 efficiencies that come in by decentralizing the actual
11 conduct of the test.

12 And one of the things that comes up all
13 the time is should anybody be excluded from this?
14 Should we exclude CPAs or enrolled agents? In my
15 opinion, it should be everyone. Those who think they
16 should have an exception should have zero problem
17 passing this test if their credentials are as solid as
18 they think they are. And it strikes me that if you want
19 to hold yourself out as a tax preparer, it's okay to do
20 it through a system that's the same for everybody in the
21 business.

22 One other comment, and this is somewhat
23 unrelated, but for years we've been asking the IRS to
24 require, under Circular 230, anybody who wants to be an
25 enrolled agent to have an e-file and to file most if not

1 all of their e-file capable returns electronically. It
2 just strikes us as odd that people who make themselves
3 the standard in tax professionalism are so under-
4 represented in the IRS' preferred medium of tax return
5 transmission. (Editorial comment there.)

6 A little bit on bank products. Mike has
7 said it well. The bank products serve a unique purpose.
8 They serve a purpose that is going to be difficult to
9 replace if they should go away. However, there are some
10 things that can and should take place to provide those
11 products in a more cost efficient manner.

12 One of the things that a lot of people
13 forget is that while the interest rates look huge on an
14 APR basis, they are not term loans. So, when you look
15 at it as a cost of funds, it's actually a fairly
16 inexpensive way for people to get shots at money that
17 they get once a year and desperately need.

18 One of the things the IRS could do that
19 would really dramatically bring down the cost of refund
20 anticipation loans is to substitute for the debt
21 indicator a positive pay indicator. If you assume a
22 \$3,600 average RAL with a one percent loan loss, that
23 means \$36 of the RAL goes to cover the losses. That's a
24 substantial amount, a substantial piece of the RAL cost.

25 By positive pay indicator, and I know

1 there are details that we have to work out for
2 compliance and treasury protection and things like that,
3 but the industry does not need to know why a refund will
4 or will not be issued, just that it is. And it would
5 actually provide some privacy protection for taxpayers.

6 We don't need to know if somebody holds child support
7 payments or anything else. All we need to know is, is
8 the refund coming or is it not? And so, that would
9 dramatically reduce the cost of the industry here and
10 then the cost to the taxpayers ultimately.

11 One of the things I'd like to make sure
12 that the Service understands is that there is a lot of
13 things said about the RALs that's simply aren't true.
14 One of the other panels I attended earlier this year,
15 somebody made a comment that preparers are incented on
16 this to grow the size of the refund so they get more
17 money from the banks for larger loans. That simply
18 isn't true and nor has it ever been true. There has
19 never been a case where any of the banks paid incentives
20 to preparers based on the size of the loan. Okay, and
21 as of today, almost none of the banks pay incentives to
22 preparers at all. So, I mean that simply is a
23 misstatement.

24 And along those lines, I hope the Service
25 will use some diligence to check out some of the things

1 that you're told in these panels and in other forms of
2 communication to make sure that what you're being told
3 is accurate. It may or may not change what you decide
4 you want to do, but at least you'll have the facts.

5 Let's see. Role of tax software
6 companies. And again, as Mike said, we think it's fine
7 for the Service to look at ways to make sure that the
8 software companies are doing what they're supposed to
9 do. And given that more than 60 percent of American
10 taxpayers use software to file their returns, and it's
11 more than that when you include the online software,
12 it's important to get it right. However, a person I
13 respect a lot asked me to read a book called Nudge that
14 was written by a couple of University of Chicago
15 professors. It talked about something called
16 libertarian paternalism which strikes me as being odd
17 and so I read the book and it sort of started making
18 sense.

19 Let the competition and the industry
20 drive the innovation and drive the structure of the tax
21 returns as opposed to imposing it to a one-size-fits-all
22 by Service mandate. There are all software practices
23 that have hedged down data entry input. There are
24 interview forms. There are others that use a forms-
25 based software. There are hybrids. There are packages

1 that do everything for you. There are packages that
2 require a lot of manual entries and worksheets. And the
3 price ranges from a few hundred dollars up to many
4 thousands of dollars.

5 The software companies tailor their
6 products to their customers, and I wouldn't want to see
7 the Service change that. Let us compete with the other
8 companies based on how well we produce products that our
9 customers are asking for. Now, again, if there are some
10 specifics that we need to include to make sure the
11 Service is getting accurate returns out of the software,
12 fine. We're pretty much in support of that.

13 Okay. Just one more, and I know this is
14 impossible, but one of the things that would really help
15 the entire tax industry including the Service is if we
16 get our friends on Capitol Hill to recognize the
17 difficulty of implementing late notice tax law changes.

18 And they've gotten to the point now that even
19 retroactive doesn't seem to bother them. So, all the
20 work that you folks do and that we do trying them up and
21 stuff, you have to go back and do it all over again. If
22 you're trying to drive down costs, one of the things you
23 have to avoid is making people do things two or three
24 times based on somebody's best new idea.

25 I understand the role of Congress. It's

1 their job to do tax legislation. But a little more
2 concern on their part about the -- I used to say they
3 have the tough job. They have to decide what is going
4 to happen. The Service and the industry have the easy
5 job because all we have to do is implement it. So, it's
6 a little more, and I know the IRS has to be careful how
7 you react to that kind of a comment but I doubt there's
8 a lot of --

9 DEPUTY COMMISSIONER ERNST: We don't disagree
10 with it, we just can't react to it.

11 MR. HOLT: I'm sorry?

12 DEPUTY COMMISSIONER ERNST: We don't need to
13 be careful, we just can't react.

14 MR. HOLT: Yes, right. So, in summation, let
15 me just say that we are strongly in favor of testing and
16 registering tax preparers. We agree that the voluntary
17 tax system is the backbone of the American economic
18 system. And we want to be a part of making it better
19 than it is and we'll strongly concur with whatever comes
20 out and make sure we implement it correctly. Thank you.

21 DEPUTY COMMISSIONER ERNST: Thanks, Lenny, we
22 appreciate it. Let me next introduce John Sapp.

23 John is Vice President at Drake Software.
24 John oversees Drake's sales, marketing and education
25 groups. He's served as Drake's chief financial officer

1 from 1995 until 2006 and still serves as treasurer of
2 Drake Enterprises. Prior to joining Drake, John spent
3 several years in public practice working as a tax
4 specialist with local and national accounting firms. He
5 joined Drake more than 15 years ago and has since been
6 instrumental in educating many Drake tax preparers on
7 tax law and practice management. He's a certified
8 public accountant since 1987 and is a member of both the
9 AICPA and the NCACPA. John, we look forward to your
10 comments.

11 MR. SAPP: Commissioner Ernst, Ms. Hawkins, we
12 appreciate the opportunity to contribute to the
13 important topics of preparer regulation and the role
14 that tax prep software plays in aiding paid preparers
15 and the American public to file accurate tax returns. I
16 don't necessarily appreciate the opportunity to go after
17 Mr. Holt.

18 Drake has provided software and developed
19 relationships to paid preparers since 1977. We
20 currently have over 30,000 installed locations that
21 utilize our software representing multiple paid
22 preparers as Mr. Holt has already pointed out. The
23 preparers who use our tax software range from value
24 offices who serve the lower income, normally simpler
25 returns, to CPA firms that handle the more complex in

1 the market.

2 Most of our preparers are unlicensed.
3 However, most of our preparers prepare high quality
4 returns and serve communities in all aspects of America,
5 both urban and rural centers. They are also leaders in
6 such organizations as NATP and NAEA. And they're almost
7 all small business owners themselves.

8 Our relationship with the preparer,
9 however, is not as their tax adviser. We are not the
10 tax adviser to the tax adviser. We try to draw a firm
11 line between providing assistance in using our software
12 and getting the answer that they know is right versus
13 providing tax advice to the tax preparer. We believe
14 professional tax software, regardless of how good, does
15 not replace preparer knowledge nor their responsibility.
16 Preparers must have an understanding of the tax law for
17 the taxpayer demographic they choose to serve.

18 So, what is tax software's role in
19 accurate tax preparation? Although tax software cannot
20 replace the preparer's tax knowledge, the software
21 itself still plays an integral part in the success of
22 our taxes. We strive to provide software that will
23 facilitate good returns.

24 The tax software industry today is self
25 governed by the market in that if my software is not

1 accurate and process isn't unreliable, our customers
2 will find the man on my right or the man on my left and
3 their software will be. We do not have room for
4 excessive error and we have to produce updated, improved
5 versions of our products within very tight time frames.
6 We continue to make ongoing significant monetary
7 investments and spend years perfecting procedures and
8 processes to ensure the quality and timely delivery of
9 our product and that our processing is reliable.

10 Development is done by teams that include
11 experts in the area of tax law, product and process
12 management technology and programming. Historically, we
13 have always worked very closely with the Internal
14 Revenue Service. We were involved with the very first
15 e-filing pilot project back in 1986 and more recently
16 the modernized e-file initiative EITC working groups.
17 We work closely with both the Criminal Investigation
18 Division and the Department of Justice in identifying
19 and prosecuting fraudulent preparers.

20 In addition, Drake supports numerous
21 private groups to facilitate ongoing communication with
22 the IRS such as CERCA, and we assist in meeting the
23 needs of the American public. We also offer the
24 preparer tools that address the more subjective
25 components of tax preparation. For example, the 7216

1 regulations or EITC due diligence. We provide the tax
2 preparer both education on their responsibilities and
3 tools within the software to stop noncomplying returns
4 from even being filed. Our document management system
5 which all of us have is always there to allow a preparer
6 to comply with IRS record keeping requirements. Another
7 example is all of us have ongoing education
8 opportunities for our preparers which are normally
9 available online, 24 hours a day, seven days a week at
10 minimum cost, with classes on tax law, regulatory
11 changes and other topics.

12 It is, however, the preparer who decides
13 if and how to utilize the tools we provide. The
14 preparer decides the compliance level and the effort he
15 will expend to meet that compliance. It is in our
16 mutual interest, both the preparer, the tax software
17 industry, and the Internal Revenue Service, to have only
18 compliant preparers filing tax returns. We all agree.
19 As a result, as we've thought about this and considered
20 it, we don't believe those who intentionally prepare
21 fraudulent returns will be deterred from doing so by
22 additional regulation.

23 Recognizing that fraud occurs at all
24 levels of tax preparation, both complex and simple, and
25 cost American taxpayers billions of dollars annually and

1 occurs in both an unlicensed preparer and the most
2 licensed preparers, with or without preparer regulation,
3 disreputable individuals will continue to attempt to
4 exploit the system. And in our opinion, they should not
5 be the primary focus of this effort mainly because they
6 won't comply anyway, but also this appears to be more of
7 an enforcement issue. Bad preparers once again are not
8 only bad for the public but they are bad for other
9 preparers who invest their dollars in education and
10 internal systems to prepare quality returns.

11 We do believe there are six action points
12 the IRS should consider with the focus on accountability
13 and education. We believe the software industry is
14 willing to work closely, and I don't mean to speak for
15 the other members of the software industry but Drake, we
16 will work closely with the IRS on implementing these six
17 points in almost any fashion or any level.

18 Number one, tax competency testing. We
19 fully support testing for everyone. However, we do not
20 believe a one-size-fits-all test is practical. A
21 preparer's required level of tax knowledge should be
22 tied directly to the demographic and types of returns
23 they wish to prepare. It would merely place undue
24 hardship on a preparer and possibly deprive some
25 communities of otherwise competent prepares to require

1 knowledge of an area of the law that does not affect
2 their practice. We believe that a multi-tiered
3 competency test, one based on the types of returns for
4 which a preparer provides services, is needed.

5 Along with that, a logical conclusion to
6 that would be continuing professional education. The
7 minimum requirement should be extended to encompass all
8 paid preparers and should be tax specific. As Lenny
9 mentioned, while some professions, CPAs and attorneys
10 for example, have CPE requirements, they may or may not
11 be tax specific. The requirement type should be tied
12 directly to the level of accreditation received under
13 the tax competency test.

14 Number three, we believe the IRS should
15 use the PTIN to identify all preparers. The preparer
16 should be required to have this number on all returns.
17 We in the software industry would love to work with the
18 IRS on accomplishing this.

19 That could lead to our fourth point which
20 was take that PTIN data and leverage it similar to the
21 current audit selection process for individual tax
22 returns and identify problem preparers. The data could
23 be used to develop other red flag indicators to stop
24 problems with preparers before they become widespread
25 three years later.

1 The fifth point we consider would be to
2 extend Circular 230 ethics rules to all preparers.
3 While Pub 1345 for electronic return originators have
4 some ethics indicators today, it does not have the teeth
5 of Circular 230. We believe the ethics rules should be
6 simple, easy to follow, apply to everyone, and address
7 day-to-day problems that arise in the tax office. In
8 other words, the ethics road that we should ask all
9 preparers to travel should be a very narrow path, but it
10 should have very large warning signs when someone is
11 going to stray from that path. We believe if this is
12 done, it will lead not just to a disclosure at the
13 bottom of all of our e-mails but true accountability
14 within the prepared community.

15 And finally, we believe the IRS should
16 consider criminal background checks for every paid
17 preparer. We believe the logical step to start would be
18 the ERO process. When the application is filed, every
19 ERO, because electronic filing is becoming the preferred
20 method of filing tax returns, it appears to us the ERO
21 process would be a logical starting point. Since the
22 American public trust their preparer with their most
23 vulnerable financial information, we believe they should
24 have a high level of assurance their trust is correctly
25 placed.

1 In conclusion, we fully support these
2 initiatives. We believe the timing is right for making
3 these changes. We applaud the IRS for giving us and the
4 preparer community the opportunity to contribute to the
5 decisions being made. Thank you.

6 DEPUTY COMMISSIONER ERNST: Thank you, Mr.
7 Sapp. So, as part of the review, we were trying to
8 understand both the professional and software market as
9 well as the consumer market because it affects so many
10 people's filings. So, the next one to introduce, Dan
11 Maurer.

12 Dan currently serves as Senior Vice
13 President and General Manager of Intuit's consumer group
14 which includes TurboTax, the nation's leading consumer
15 tax preparation software, and Quicken, the leading
16 consumer personal finance management software. As
17 general manager of the consumer group, Mr. Maurer is
18 responsible for all aspects of the company's portfolio
19 of consumer products, including product development,
20 marketing, operations and customer service and support.

21 Prior to his appointment as general manager, Mr. Maurer
22 served as marketing vice president in the TurboTax
23 division as well as the chief marketing officer for
24 Intuit. We welcome you and look forward to your
25 comments.

1 MR. MAURER: Thank you, Deputy Commissioner
2 Ernst and Director Hawkins. We appreciate the
3 importance of IRS' preparer oversight initiatives. And
4 I'm personally humbled and thankful to be requested to
5 be here, so thanks.

6 Let's start with just a bit of
7 background. In our tax business, our goal is to enable
8 taxpayers and tax preparers to prepare accurate returns,
9 to deliver all of the benefits taxpayers deserve with
10 the least burden. There's two key areas of our tax
11 software business. The TurboTax business, as you
12 mentioned, is enabling an estimated 19 million consumers
13 to self-prepare their returns, and our Lacerte and
14 ProSeries business enables about 100,000 tax preparation
15 businesses to prepare consumer returns as well.

16 It's a highly competitive industry. It's
17 a large market. As you all know, there's 140 million
18 returns and there's two primary preparation methods
19 preparers, large chains as well as thousands of
20 independent preparers and do-it-yourself which either
21 use software or manual to prepare their returns. And
22 it's a complex and demanding environment.

23 It's a very complex tax code, Taxpayer
24 Advocate's number one most serious problem, according to
25 the Taxpayer Advocate it's the number one most serious

1 problem facing taxpayers. And this industry needs to
2 meet very tight time lines, often exacerbated by late
3 passing legislation. This isn't a criticism, it's just
4 a reality. And industry has been able to handle that
5 reality well.

6 Most importantly, our industry has a
7 responsibility to build confidence and trust with
8 taxpayers, tax preparers, and the IRS. We can never be
9 satisfied with our performance. We always have to
10 strive to be better. And so, with that as background,
11 let me set context for our recommendations.

12 We agree with GAO's view of the four key
13 areas for electronic tax area: security, privacy,
14 accuracy, and reliability. We believe the right
15 approach is to essentially set a bar, what are we trying
16 to achieve, and then be willing to measure ourselves
17 against that bar. In doing so, we believe it's critical
18 to, number one, leverage existing industry standards and
19 practices and stay focused on high level requirements
20 without becoming overly prescriptive in how to achieve
21 that bar.

22 So, with that said, let's talk about the
23 four areas. In the area of security, we recommend
24 designating a recognized standard, industry standard
25 such as ISO 27000. As I mentioned, ISO 27000 is an

1 internationally recognized control framework for
2 information security. It sets standards and objective
3 criteria and it is well established. We also recommend
4 using third parties to assess performance against that
5 bar and using verification systems such as SAS 70. SAS
6 70 essentially is a process where a company establishes
7 the practice they have to meet the bar, and then
8 recognized public firms have the ability to audit
9 against those standards to ensure that companies are
10 living up to them.

11 When it comes to privacy, we recommend
12 and support an IRS current direction of requiring a
13 licensee accreditation seal from approved consumer
14 protection and privacy seal vendors like Trust-e.

15 When it comes to accuracy, we recommend
16 having three things: having highly qualified tax
17 professionals who understand the tax law; working with
18 industry to establish a high level development framework
19 based on existing best practices; again, we would
20 recommend the IRS consider verifying that with a SAS 70
21 type audit verification process. We also recommend that
22 the IRS consider leveraging their existing report
23 card/score card process to formalize discussions on
24 accuracy issues which is currently used for e-file but
25 we believe could be expanded beyond.

1 And in the fourth area of reliability, we
2 recommend setting a high bar. We recommend a 5'9's
3 availability for core data center facilities. We also
4 think that that's verifiable to establish best practices
5 such as again a SAS 70 audit. And we recommend applying
6 other IT service and operation best practices as they
7 develop.

8 So, we've spoken about security, privacy,
9 accuracy and reliability. We're also supportive of a
10 self-regulatory organization, an SRO. An SRO could
11 provide effective oversight, especially if the IRS
12 leverages existing industry standards and certification
13 processes.

14 So, in closing, we support the IRS'
15 strategic objective of strengthening partnerships with
16 the tax preparation community to ensure effective tax
17 administration, and we stand ready to work together with
18 the IRS to advance the public interest. Thank you.

19 DEPUTY COMMISSIONER ERNST: Great. Thank you,
20 Mr. Maurer. At the outset, I neglected to introduce my
21 co-lead on this and I apologize for having done that and
22 rectify that now.

23 DIRECTOR HAWKINS: I needed no introduction,
24 right?

25 DEPUTY COMMISSIONER ERNST: As a matter of

1 fact, I did feel that way which is why I didn't. Karen
2 Hawkins is Director of OPR and is joining me today. And
3 we're going to spend the next, oh, half an hour or more
4 with questions.

5 And I will maybe kick this off, because
6 we're trying to, I actually want to spend time talking
7 both about software itself specifically, maybe more of
8 our time with that, but also getting a little bit of the
9 insight that a number of you have in dealing with the
10 vast kind of tax preparer universe of practitioners that
11 are out there. One of the things that struck me through
12 this process is that we haven't seen anybody yet,
13 although we have one more panel coming, step forward and
14 say that there is nothing, the IRS doesn't need to do
15 anything, everything is fine. And a number of you
16 represent many currently unregulated, unlicensed
17 preparers, or you work with them quite closely and
18 enable them and their businesses. I'm wondering if you
19 have any sense of, you know, who are those people that
20 might not believe some form of a registration licensing
21 process is necessary.

22 MR. HOLT: I think it's everybody except my
23 company.

24 DEPUTY COMMISSIONER ERNST: Yes. I mean, is
25 there any sense that you hear from clients, from people

1 that you deal with that is an opinion that we're just
2 not hearing?

3 MR. SAPP: Well, I will say this. There is a
4 large segment of the unlicensed preparer community that
5 do not keep up with national events such as what we are
6 discussing. When they hear about them, they may get a
7 piece of it and so they become very concerned with the
8 fact that I'm going to be asked to pass the CPA exam, or
9 I'm going to be asked to pass the EA exam. I've been
10 preparing good tax returns, maybe I was even an
11 exemplary ERO one year. But I don't know if I could
12 pass the EA exam, I'm not doing 1041 returns.

13 So, there's a, I believe there's a lot of
14 angst within that preparer community that may, the
15 feedback we may receive may say I don't want to do
16 anything different than what we're doing today, my
17 practice is good, everything happening here is okay.
18 However, I do believe a large segment of that population
19 has seen an influx of what they consider preparers that
20 are unscrupulous. And I believe almost every good
21 unlicensed preparer now has a competitor somewhere
22 within his region that he can point to and say that guy
23 needs some help.

24 And I believe as a result of that, I do
25 believe there is an underlying support for a change in

1 regulation within their industry.

2 DEPUTY COMMISSIONER ERNST: I mean, that's
3 exactly my concern, because we've heard a lot of people
4 say it's the other guy. We haven't heard the other guy
5 respond.

6 MR. SAPP: Sure.

7 DEPUTY COMMISSIONER ERNST: So, you know --

8 MR. HOLT: Well, but the people that are going
9 to respond to that are going to be the ones that at
10 least see themselves as honest preparers. You know, the
11 guy who is a crook isn't going to come and say, hey, I'm
12 fine, you know, leave me alone. He's going to try and
13 hide.

14 DEPUTY COMMISSIONER ERNST: All right, fair
15 enough.

16 DIRECTOR HAWKINS: Well, but in all fairness,
17 and you've looked at the GAO and the TIGDA studies, and
18 the mistakes that are on returns aren't necessarily
19 because someone is unscrupulous. They are sometimes
20 because someone is not competent to be doing whatever
21 level of tax return they are doing.

22 And that kind of gets me to my first
23 question because anecdotally we are hearing both from
24 some of the folks in these public forums as well as in
25 the town hall meetings that I've been holding around the

1 country mostly with unenrolled preparers, that a lot of
2 these folks that I think you're referring to as
3 unscrupulous manage to get themselves into the tax
4 preparation business by buying your off-the-shelf
5 software and then consider themselves to be professional
6 tax preparers because you've made such wonderful
7 products they can just go right down the list and they
8 think that they've done it. So, they don't recognize
9 whatever levels you've built into them of expertise.

10 And I guess my question to you all as a
11 group would be what is it that the industry can do to
12 assist the Internal Revenue Service in trying to ensure
13 that people aren't going in to Best Buy and picking up a
14 software package or going online and buying commercial
15 software package when they don't know their elbow from
16 their knee about what they're doing. Is there a way
17 that we can restrict to those people? Would you be
18 willing to make them test in before they bought your
19 software?

20 MR. MAURER: Oh, I would like to address that.

21 I think it does start with the preparer themselves
22 because as most of you know, TurboTax is not designed
23 for professional preparers and that behavior is not the
24 practice for which the product was designed. So, let's
25 start there. And professional preparer knows that and

1 buys products that are more suitable for professional
2 preparation.

3 Having said that, Intuit would be happy
4 to work with the industry and the IRS to talk about what
5 we could do to limit that practice, which would include
6 is there something that we could do in the software
7 itself to help customers understand that if someone is
8 preparing their return for them, that they should take
9 accountability for it and sign that return. It could be
10 in the form sets that are printed that specify if a
11 professional has prepared the return, there is a place
12 for that signature. Or it could be through a practice
13 of recognizing that the software is designed to allow
14 several returns it's designed from a family perspective
15 which has been a practice since the software has been
16 designed. But beyond that, we'd be happy to work with
17 the IRS and industry to understand what we could do to
18 make sure that it was limited in that regard.

19 DEPUTY COMMISSIONER ERNST: So, can I just
20 kind of pick up on that and press on that just a bit?
21 Because one of the things that we have heard at the town
22 halls and others is that there are a lot of people, not
23 a lot, there is a subset of the unenrolled market that
24 is of some concern to some folks where their chosen
25 method of getting software support is to either use a

1 consumer product or to actually use an online DIY, do-
2 it-yourself product, but that today the products are
3 designed that you cannot as a paid preparer take
4 responsibility for that return. The software just
5 doesn't allow it. Am I understanding that accurately?

6 MR. MAURER: The software does indicate that
7 it's not designed for professional preparer, but as a
8 further response to my answer, we stand ready to work
9 with the industry and the IRS to put in any safeguards
10 or any attestation that says a professional preparer is
11 preparing the return. We see this as something that,
12 again it wasn't the design and so if people are using it
13 in that way, we can both educate and put in the
14 safeguards that ensure that it's for the proper use.

15 DIRECTOR HAWKINS: Yes. I'd like to take the
16 heat off of you and move to the commercial preparers, I
17 mean, software people for a minute because as somebody
18 who has come from 30 years of private practice, more of
19 my experience is with professionals who go in and buy
20 the commercial software because they are CPAs or lawyers
21 or I guess even enrolled agents who may not be equipped
22 to do returns at more complex levels. But again, your
23 software is, and I have used some of your software so
24 I'm not saying this in a derogatory fashion here, your
25 software is so magnificent that you don't have to think

1 very hard particularly if you didn't know what the
2 concept was anyway. You wouldn't know whether your
3 software required thinking. Is there something that we
4 can talk about building into that? And I'm quite
5 serious because of Mr. Holt's comments, is the software
6 industry where we look to do the testing in before
7 anybody can access an electronic product?

8 MR. HOLT: Let me, you mentioned something in
9 your first question that I want to make sure I don't
10 forget to respond to. I think it's important that in
11 all these discussions we separate the unscrupulous
12 preparer from the incompetent preparer. There are
13 plenty of both but they're not necessarily the same
14 people, okay.

15 One of the things, and yes, there are
16 lots of things we can do with the software to address a
17 lot of this, but we have to be careful not to overdo it.

18 What I mean by that is if we make the software too
19 prescriptive, they do A and then do B and then do C,
20 you're going to make the problem worse that you're
21 trying to correct. I know, John, you and I have spoken
22 about this, that we want our software to be accurate.
23 We want it to be easy to use and fast and all the things
24 that it has to be to be competitive.

25 MR. CAVANAGH: And indeed magnificent.

1 MR. HOLT: And indeed magnificent. Well, ours
2 already is, I think.

3 DIRECTOR HAWKINS: Or more magnificent.

4 MR. HOLT: But what we don't want it to do is
5 substitute our software for tax knowledge on the
6 preparer. So, I know our software and, John, I know
7 yours as well, has a lot of things there where we either
8 don't prescribe an answer, we don't hard code anything
9 in, or in the few instances where we do, we always allow
10 an override because we don't want to substitute our
11 judgment for the tax preparer. So, so long as we can
12 make changes that help everybody and keep that in mind,
13 I'm fine with that. I think we can do that.

14 DIRECTOR HAWKINS: Like unchecking the B box
15 for the default No for the FBAR penalty issues.

16 MR. HOLT: Sure.

17 DIRECTOR HAWKINS: But what about the notion
18 of us, us being Internal Revenue Service, using your
19 software companies to actually do the testing?

20 MR. HOLT: I think that's a great idea. And I
21 think that's the only way you'll have any chance of
22 getting it done.

23 DIRECTOR HAWKINS: And then, I guess you would
24 sign up to not sell a piece of software to somebody who
25 has not passed whatever preliminary test we think they

1 need to take to access that software?

2 MR. SAPP: We both have education departments
3 today that provide continuing education. And we have
4 committed to our customers as I'm sure the other
5 software vendors have done for theirs, if there is a
6 test, we're going to help them pass it. We're going to
7 help them become competent to pass whatever it is.
8 We're going to educate them and we'll help them meet any
9 CPE requirements. We're already making that commitment
10 to our customer bases.

11 So, for us to say we're going to not only
12 help you pass this test, we'll administer it to you,
13 it's a national progression for us. And it's something
14 that we can do relatively quickly.

15 MR. HOLT: But again, there are a lot of, as
16 John said, we'll help any way we possibly can, but there
17 are some details here that just have to be addressed
18 before we come out with any hard and fast rules. For
19 example, I'd be more than happy to say we won't sell our
20 software package to a preparer who has not yet tested or
21 registered, okay. However, once they do, I don't want
22 to unsell it because they hired a new seasonal tax
23 preparer. I mean, so long as we can address that
24 turnover thing, I think we can come up with a solution
25 there.

1 DEPUTY COMMISSIONER ERNST: Can I take us to a
2 different direction slightly? I think a new concept
3 that was introduced today than what we've heard before,
4 and I think I heard it the news both as it relates to
5 tax, the new oversight of the tax preparer community as
6 well as the software community, and that's the notion of
7 an SRO. Can you talk specifically, anybody, on the
8 notion of an SRO for the software industry? What you
9 would imagine it could accomplish that competition isn't
10 accomplishing today?

11 MR. CAVANAGH: Well, I want to say that, to
12 start with, there are a whole range of different SRO's,
13 as the Commissioner knows well. FINRA is a \$950 million
14 a year budget organization that does a lot of self
15 regulatory stuff, and certainly is not practicable to be
16 talked about in this. It's also in the definition that
17 is used now of, because SRO's are being talked about
18 more broadly reasonably, the American Medical
19 Association and AICPA and others are self regulatory
20 organizations. It would, we're talking about a smaller
21 universe, but on the issue of why we need to move in
22 this and exactly how we move in this direction, what
23 CERCA has suggested is that it's complex enough that
24 something like what you're doing right now in the
25 security arena which is a joint working group to work

1 the issues with the IRS and top industry people, we
2 don't have the answers. We cannot present to you today
3 what an SRO should be.

4 On the issue of is any of this necessary
5 at all, to be sure would be hard since we're talking
6 about 89 percent of all tax returns in the country being
7 done on software. It would be hard to say that it isn't
8 going well. In fact, it's going very well. And in
9 fact, you have outstanding performance by a range of
10 competitive firms and that's a nice thing to say. But
11 no one could reasonably dispute that.

12 But there is the question that is being
13 asked by senior policy officials, GAO being asked by
14 Congress to look at these issues: is software important
15 to our country? Yes, it is. And should there be any
16 way in which there should be, that the American taxpayer
17 should be confident that software is carefully, that it
18 does in fact continue to operate in the magnificent way
19 that it really does operate? And the answer that we've
20 come up with is that that should be explored in this
21 joint working group concept that could lead to an SRO if
22 indeed that's the approach that should be taken.

23 MR. HOLT: Let me add to that, too, because I
24 think the ease of putting together an SRO is better now
25 than it ever has been. The same thing that's happened

1 in our industry that has happened to so many others over
2 the years, when some new technology is implemented, in
3 the mid 80's to late 80's when these industries were
4 born, I mean you had a million tax preparers out there
5 who had been doing returns by hand and they were buying
6 PCs and desktop software for the first time. So, you
7 know, there's lots of people who've put together a
8 software package in their garage and would sell it
9 because the market was so ripe.

10 That's changed. At the first IRS tax
11 forum in 1990, I think there were 50 tax software
12 companies just displaying their wares. It's down to, it
13 depends on how you count it, eight to ten now. So, the
14 people who really had problems are gone. They've either
15 sold to somebody else or gone out of business, whatever.
16 You're down to the handful of people that are likely to
17 be here for the long haul, and it's all of our best
18 interest to make sure that the relationship between the
19 Service and the industry is good.

20 DEPUTY COMMISSIONER ERNST: So, that's
21 actually why, part of the reason I asked the question,
22 because we are aware that there has been significant
23 consolidation in this industry. And the question I
24 guess, does an SRO or would an SRO have the effect of
25 just locking in that competitive position that a number

1 of firms have and restricting new entrants, restricting
2 competition in a way that doesn't sort of serve the tax
3 administration for the country well?

4 MR. HOLT: I suppose --

5 MR. MAURER: I could speak to that.

6 MR. HOLT: Go ahead, go ahead.

7 MR. MAURER: A couple of things. Number one
8 is we agree with the GAO recommendation in the four
9 areas where oversight by the IRS would be beneficial to
10 the taxpayer and the IRS. We think it lives up to the
11 concept of set the bar high and strive to get better
12 which can only build confidence in the activities that
13 we perform year on year. It's for that reason that we
14 suggest that an SRO, once those standards are set or
15 once the IRS determines how it is that they want to
16 provide that oversight, that an SRO could be a cost
17 effective way to ensure that those standards are met.

18 So, it's a cost effective way which
19 speaks to the idea of entry in the industry. I'd also
20 say that it's a pretty competitive industry. There's
21 140 million returns. Just in the consumer software
22 business alone, there is over 20 competitors. Many of
23 them are launched in the last five or ten years. So, I
24 don't believe that setting a high bar for performance to
25 build confidence is in conflict with having a

1 competitive marketplace.

2 DEPUTY COMMISSIONER ERNST: Thanks. Let me
3 also go to another topic that several of you brought up,
4 and that's the issue of bank products. And I was
5 particularly, I guess struck, Mr. Holt, by your comment
6 that a positive pay indicator would help enable lower
7 pricing by lowering the sort of effective cost of doing
8 business. I think that was the same argument as I
9 recall that was made in 2000 when the deposit indicator,
10 the DI, was brought back, that it would, you know, have
11 the effect of lowering cost. And today, we know that
12 pricing has, at least last year was higher than it was
13 prior to the DI coming back.

14 So, I'm wondering whether, you know, you
15 can talk more about kind of your sense of how this
16 product really works in the market and how it really
17 gets priced in the market versus what the IRS can do.

18 MR. HOLT: It doesn't always happen as quickly
19 as people might like it, but competitive pressures do
20 eventually drive prices down. And the cost of bank
21 products in 2010 is going to be significantly lower than
22 it has been in the recent past. So, again, it takes a
23 while. But as you know, there were a couple of large
24 organizations a few years ago that announced a new
25 pricing structure for bank products. And it's taken two

1 or three years but that's now pretty much industry
2 standard.

3 Again, if there is some sort of plan to
4 put some pricing guidelines out there, I don't think
5 anybody would be opposed to that so long as the Service
6 is helping the industry avoid catastrophic losses. I
7 mean, in the years where the IRS has had major systems
8 problems, I mean, the banks have lost incredible amounts
9 of money. While people may not have any sympathy for
10 that --

11 DEPUTY COMMISSIONER ERNST: I'm going to --
12 yes, but in the year when the IRS had systems problems,
13 the industry made a lot of money, too, because we
14 weren't capturing as much kind of fraud on the front
15 end.

16 MR. HOLT: Different systems --

17 DEPUTY COMMISSIONER ERNST: It cuts both ways.

18 MR. HOLT: For example, the years you set up
19 paper checks instead of the direct deposit refunds,
20 those kinds of things, all right. So, one of the
21 concerns about a positive pay indicator and what not is
22 it would help people figure out what the IRS revenue
23 treasury protection schemes are. All you're doing by
24 not doing that is delaying that detection by about a
25 week or two. And in the meantime, that's when the

1 fraudsters hit it hard because shortly thereafter, you
2 know, the industry does figure out what the IRS is
3 screening for and what it isn't and reacts accordingly.

4 So, anybody in this business that won't
5 sign some sort of an agreement on how to do this without
6 giving away the farm, okay, so we cut them off. But
7 it's an interesting business. Somebody mentioned tax
8 simplification, but you know, EITC, what I would ask you
9 to do is find a reasonably intelligent, reasonably
10 educated friend that's never done a tax return, give
11 them the instructions of EITC and see how well they do.
12 Okay? When you think about the people that it's
13 designed to help, they can't do this by and large and
14 they're going to need the help of a tax professional.
15 And they have a problem of not being able to pay for
16 that, so you get back into that system.

17 But have there been abuses? Absolutely.
18 Is it time to crack down on them? Absolutely, we're all
19 in favor of that. But again, some help from the IRS in
20 helping the industry avoid losses would go a long way.

21 DEPUTY COMMISSIONER ERNST: Mr. Cavanagh, you
22 said that that set of product brings people to the
23 professional tax preparation industry, and what we've
24 heard in a number of other forums is the sort of
25 behavior of refund shopping where people go from

1 preparer to preparer to find out who will get them the
2 biggest refund. And we think we all understand that
3 that's, you know, related to EITC and how that occurs.
4 That would almost seem to suggest that, you know, these
5 products are in some ways facilitating that shopping
6 behavior.

7 MR. CAVANAGH: Well, certainly -- well, two
8 things. One is there are fraudulent players, we said
9 there are unscrupulous players. We hope that this
10 effort and general enforcement would be able to deal
11 with that. And it's important, we couldn't support
12 anything more than that being the case. But it's also
13 true that if a disadvantaged American did not have a
14 chance to have their taxes prepared professionally, then
15 indeed they wouldn't be able to refund shop because they
16 wouldn't be able to go to any professional tax preparer
17 at all.

18 DIRECTOR HAWKINS: I'm going to shift again, I
19 guess. A couple of you mentioned the possibility of
20 doing background checks for every paid preparer. It
21 strikes me as a formidable task, but notwithstanding the
22 task itself, where would we be drawing the lines if
23 we're doing background checks? Are we looking for
24 people with just financial oriented crimes? Are we
25 looking for people with what I would call moral

1 turpitude crimes?

2 When you start delving into people's
3 personal histories that way, you know, particularly for
4 the Internal Revenue Service delving into people's
5 personal histories that way, where are we going to put
6 the, draw the demarcation points for when someone is fit
7 to practice before the IRS, when people are fit to
8 prepare a tax return?

9 MR. SAPP: Well, that's an excellent question,
10 and it does breed a variety of different ways you could
11 attack that. And we believe that, today, the IRS does
12 criminal background checks on some percentage of
13 electronic return originator applicants. All we're
14 saying and our only position is, and as we've debated
15 this internally, we thought, well, why only EROs? Is
16 there something, you know, sacrosanct about the person
17 that's just going to electronically file the return when
18 everyone else involved in the preparation also has
19 access to the same data, has access to whether it's a
20 good tax return, and could perpetrate the fraud on the
21 taxpayer anywhere within that chain?

22 So, the question became if you're just
23 going to perform criminal background checks on EROs, why
24 not all EROs? So, whatever level of criminal background
25 check the IRS is using today on electronic return

1 originators, we would say from a logical standpoint if
2 it's worth doing for one, it's probably worth doing for
3 all.

4 MR. HOLT: I mean, I could address some of the
5 reasons how it got this way. There are some advantages
6 to getting older. When we first started electronic
7 filing, just before we brought in the first five
8 companies to do e-file in 1986, somebody had the idea,
9 hey, we should check to make sure there's no problems
10 with these guys because the last time we went, there's
11 this new program to hit the funny papers, okay. So, it
12 was only intended to be one year just to make sure that
13 we hadn't missed something. And then it became, okay,
14 for electronic filing, because of the speed of refund,
15 because of the various courses that scare some of the
16 compliance parts of the organization, it became
17 standard.

18 If you're going to be an ERO, you're
19 subjected to background investigations. And just for
20 monetary crimes. The last I knew of it, I don't know if
21 that's changed. But for example, I knew of one fellow
22 who robbed a bank and when he got out of prison he was
23 allowed to go back into the business because he hadn't
24 embezzled, you know. That struck me as being kind of
25 odd.

1 But it does seem to me that particularly
2 with the mounting interest in requiring electronic
3 filing, you should do it for everybody. I mean, first
4 of all, you're not going to be allowed to file
5 electronically if you can't pass the test but you've got
6 to file electronically. I mean, we'll have to resolve
7 that somehow.

8 DEPUTY COMMISSIONER ERNST: Can I take us to,
9 I know that several of you are kind of familiar with
10 this, Mr. Maurer may be the most, that is the whole area
11 of online do-it-yourself products. In general, as you
12 think about those products, do you think about the kind
13 of level of competence or level of sophistication or
14 whatever it is, tax knowledge that an individual do-it-
15 yourselfer is expected to have to be able to
16 successfully use those products? And I guess as an add
17 on to that, assuming there is some degree of an answer
18 of yes in there, has there ever been given any thought
19 to disclosing or rating for the user kind of the
20 expected level of tax knowledge they were to have to be
21 successful with it?

22 MR. MAURER: I think that answer starts with
23 what we're trying to do with taxpayers. We're trying to
24 take a very complex code and say if you understand your
25 own situation, we can ask questions in such a way that

1 you can get to an accurate return. And that's saved
2 millions and millions of customers the process of going
3 through and trying to figure out the forms manually
4 which is a very arduous process, and has saved them a
5 lot of money versus alternative methods.

6 When it comes then to how do we develop
7 the software so that it's capable of achieving that,
8 there are four key factors. First is we do a lot of
9 work understanding users. We understand how people
10 actually use the product, how they see a question and
11 answer it. We then have a great understanding of the
12 tax laws. We have over a hundred tax professionals
13 involved in the creation of our software products. I'm
14 sure the rest of the industry participants have high
15 numbers of tax professionals as well.

16 And then we have a discipline development
17 process. We have expert analysis of the tax law. We
18 have an iterative design and development leveraging
19 ongoing customer feedback. And what I mean by that is
20 as we're developing the software, we use what's called
21 an agile methodology that says this is the question that
22 we think we should ask to elicit the answer that will
23 fill out the forms correctly, and then we test it with
24 consumers. If it doesn't work, if it's not simple to
25 understand, if it's not simple to use, we change it

1 because our intent is to make it possible for people, if
2 they understand their own situation and can answer
3 questions, that they can get an accurate return.

4 And then last is we do rigorous testing.
5 We invest in training and test case automation. Every
6 line is tested. We have between 10,000 and 20,000 test
7 cases with seven and ten conditions against all of those
8 test cases that we take our software through every year.
9 And then we have continuous testing during the software
10 development process.

11 So, I guess long answer to a short answer
12 is we believe if consumers understand their own
13 situation and have the data available and can answer the
14 questions, they can get an accurate return. If they
15 cannot get an accurate return or they're not comfortable
16 with the questions, the way that online software is
17 designed, you don't pay until you're satisfied and have
18 completed your return. And during the process, we also
19 invite you to seek the advice of a professional. We
20 either can provide that through live tax advice where we
21 can call and verify the question, or through
22 professional support, or the customer is free to stop
23 the process at any point and seek professional
24 assistance if that's what they desire to do.

25 So, we believe that the software is

1 designed to help consumers prepare their taxes but there
2 are safeguards in place.

3 MR. CAVANAGH: And I guess also there is live
4 coverage in the press, reviews of different software,
5 for whatever value those are given the fact that there
6 are conflicting as what's a review of anything. But
7 much of the discussion does talk about level of
8 complexity. And so, that is certainly out very much in
9 the public arena be it in newspapers and online,
10 whatever. And so, before you even go on to check out a
11 particular software or site, you have some idea of a
12 little bit of what it's geared for and what the
13 different levels of reference point they are geared for.

14 DIRECTOR HAWKINS: During the town hall
15 meetings that I've been holding, there has been a couple
16 of interrelated concepts. One which I think you would
17 all agree is that whatever we do in the regulatory
18 arena, the public needs a pretty heavy publicity
19 campaign and marketing campaign to make sure that the
20 taxpayer public knows to look for these preparers who
21 now have registration numbers, and presumably somewhere
22 along the line will be able to represent that they have
23 certain credentials in order to prepare these returns.
24 At the same time, I'm hearing people in these forums at
25 least anecdotally tell me that a lot of preparers that

1 they see in their neighborhoods anyway use some of the,
2 either the off-the-shelf software or some of the online
3 material to do tax return preparation that they then
4 have the taxpayer file as if it was self prepared.

5 So, they're behind the scenes being paid
6 for the assistance and doing the input in the computer
7 but they are not signing the return. I'm a little
8 concerned about the disconnect of us saying to a
9 taxpayer make sure your paid preparer is signing your
10 return in an environment where we're doing more and more
11 electronic filing where nobody sees a signature very
12 much anymore. And in the context where I'm hearing this
13 anecdotal storytelling anyway, that there are folks out
14 there who are using the free or even the purchased to
15 prepare and get paid for preparing but having the
16 taxpayers sign.

17 What is it that your industry can do to
18 help us get a handle on these, these issues I guess I'll
19 just call them?

20 MR. MAURER: I think I mentioned this earlier.

21 I think there are several ways that we could attack
22 this if we worked on it jointly. One, to your point on
23 would consumers be aware and is the right education
24 available, that's something that I think the software
25 industry could address within the product. We could

1 certainly talk about that if a professional or if
2 someone is helping you, assist you to prepare your
3 return that their signature is required is another thing
4 that we could do. But we would want to work with
5 industry and the IRS to come up with a solution that's
6 workable, and that's something that we'd be very willing
7 to do.

8 MR. CAVANAGH: I'm sure that the industry, the
9 whole industry would be very happy to explore seriously
10 the --

11 MR. HOLT: Sorry, Mike. But again, there are
12 specific situations that come up that cause these kinds
13 of issues that if the IRS wants to stop them, fine,
14 we'll be glad to assist. But there are different rules
15 for being a tax preparer than there are for being an
16 ERO. So, in the past it's been perfectly okay for you
17 to prepare my return, but I take it to somebody else to
18 actually enter the data and e-file it, something because
19 my preparer doesn't want to bother, and vice versa. I
20 mean, we know for example VITA will prepare returns and
21 then you go to someone else to get a preparer sig or to
22 get a file sig and you get a loan. So, VITA doesn't
23 sign as a paid preparer.

24 So, there are just a lot of odd
25 situations here that we'll have to address in some way.

1 DIRECTOR HAWKINS: Yes.

2 MR. HOLT: Legitimate situations, things that,
3 you know --

4 DIRECTOR HAWKINS: Right. Yes, thanks for
5 those examples.

6 AUDIENCE MEMBER: Why not make the printout,
7 if it prints out, have the signature required at the
8 printout stage of the preparer? You're talking about,
9 you're like dodging back and forth, you're talking a
10 little bit about --

11 DEPUTY COMMISSIONER ERNST: Sir, I'll tell you
12 what, I don't want to use the prerogative of the
13 moderator to say we've run out of time, I think that you
14 have a great sidebar conversation it sounds like.

15 DIRECTOR HAWKINS: Well, the other thing that
16 we should probably mention I think that tiers with the
17 other forums is there are sheets for you to make your
18 written recommendations to us.

19 DEPUTY COMMISSIONER ERNST: Yes.

20 DIRECTOR HAWKINS: And we welcome them.

21 DEPUTY COMMISSIONER ERNST: Right, and we do.
22 So, with that, let me thank this panel for your insights
23 and for being here with us today. We will take about a
24 15-minute break and we'll be starting again at 11:30.
25 Thanks.

1 (Applause.)

2 (End of Panel One.)

3 DIRECTOR HAWKINS: Okay. This is the panel
4 that we're referring to as our Independent Preparer
5 Panel. Starting with the person seated closest to me is
6 Amy McAnarney, the Executive Director of The Tax
7 Institute with H&R Block. Next to Amy is Antonio
8 Zabaneh who is an H&R Block franchisee here in Illinois.
9 Next to Tony is Marianne Moe who is a Jackson Hewitt
10 franchisee also here in Illinois. Next to Marianne is
11 Cynthia MacIntosh. Cynthia is an unenrolled independent
12 tax return preparer. And last but certainly not least
13 is Raymond Heinen who is also an independent unenrolled
14 preparer. And both Cynthia and Ray are from Illinois as
15 well, so we have a local crowd for a local audience.

16 And again, the format is the same. We'll
17 be hearing five-minute or so statements from each of our
18 panelists which will be followed by the intense scrutiny
19 that only Mark Ernst and I can put together to these
20 panels.

21 So, let me start by little further
22 introducing you to Amy. She is the Executive Director
23 of The Tax Institute at H&R Block. She began her career
24 at Block in 1997 and has a significant amount of time
25 speaking to national consumer and finance media

1 audiences on behalf of both the Institute and Block.
2 She has a Bachelor of Science degree in Accounting from
3 Kansas State University. So, Amy, it's all yours.

4 MS. McANARNEY: Thank you. Great. I'm here
5 today actually on behalf of two companies. I'm
6 representing a combined corporate seat of H&R Block and
7 Jackson Hewitt that represent about 155,000 tax
8 preparers that prepare about 24 million tax returns
9 annually.

10 We appreciate the opportunity to be here
11 and to offer our support on this tax preparers
12 initiative. We do believe this reviewer initiative
13 should result in the creation of an incredible and
14 enforceable regulatory program. With only a handful of
15 states regulating preparers today, we believe that a
16 federal program for the regulation of tax preparers
17 would ensure uniformity or license and standard setting,
18 and thereby, gain the trust of all taxpayers and protect
19 their interests where taxpayers deserve a system that
20 they can trust and that works efficiently.

21 So, today I'm going to actually cover
22 five guiding principles that we, H&R Block and Jackson
23 Hewitt, believe should create the foundation of such a
24 program. And secondly, I'm going to talk about five key
25 design elements that should be built upon those guiding

1 principles.

2 So, the first guiding principle is that,
3 first and foremost, the program must have a strong
4 enforcement mechanism with sufficient resources to
5 ensure that it has long-term resilience and credibility
6 to the industry and to the taxpayers. Without the
7 strong enforcement, we believe that the initiative could
8 be meaningless and it could lead taxpayers who believe
9 that standards are actually being enforced really aren't
10 being enforced. So, strong enforcement is key, number
11 one.

12 Number two, this program must make tax
13 preparers demonstrate a minimum level of tax competency.
14 Income tax knowledge is key, as we all know, in
15 preparing income tax returns and the administration of
16 tax law changes.

17 Number three, the program must include
18 the training and the demonstration of high ethical
19 standards. Taxpayers need to have the assurance that
20 they can trust the person to prepare their taxes with
21 the highest ethical standards.

22 Number four, as mentioned earlier, the
23 program must include a strong public awareness campaign
24 for the taxpayer to understand what this program
25 actually is and, more importantly, the limitations of

1 the program.

2 Number five, finally, the program should
3 not penalize or bring additional burden to the taxpayer
4 without pause. Instead, it needs to be built around
5 regulating the tax preparer. So, with those five key
6 guiding principles, we believe that that should
7 establish the foundation of a regulatory program, and
8 for those that try to evade such standards, they should
9 be eliminated.

10 So, let's move on to the five key design
11 elements. This is where I'm going to get into a little
12 bit more detail around some specifics of the program and
13 our thoughts at Jackson Hewitt and H&R Block.

14 So, number one, first, we believe that
15 the program should apply to all individual income tax
16 preparers who either sign the return or who hold them
17 out as the preparer for the tax returns. So, this does
18 include paid preparers, preparers through a volunteer
19 organization, Circular 23 and non-Circular 230. Second,
20 we also believe that the focus should be on the federal
21 individual income tax return. Thirdly, this program
22 must include a combination of examination and continuing
23 education.

24 So, I'm going to go down that path a
25 little bit deeper. Specifically, we believe there

1 should be an initial exam and it should be required to
2 demonstrate a minimum level of competence in the area of
3 income tax knowledge, tax administration procedures, and
4 ethics. We believe that Circular 230 practitioners
5 would pre-qualify based upon their existing testing and
6 ethics programs. As a result, we believe they should
7 not be subject to this initial exam. Now, if we think
8 about the continuing education part of it, we believe
9 that it should be required to demonstrate an ongoing
10 level of competency. And we prefer a requirement
11 focusing on year over year tax law changes,
12 administration of that as well as ethics.

13 And lastly, in this area of examination
14 and continuing education, we recommend that third party
15 certification programs for profit or non-profit groups
16 be submitted for approval by the governing oversight
17 body. So, for example, H&R Block or Jackson Hewitt
18 would have the ability to submit their programs, have it
19 be blessed by the oversight body, and we could then
20 administer the program to our tax preparers. We believe
21 that this would help in the overall administration
22 burden and potential costs.

23 So, going back to number four of our five
24 key design elements, we believe that the program should
25 allow for the administrator, the governing body, and the

1 taxpayer population to be able to easily identify those
2 tax preparers who have demonstrated this minimum level
3 of competency for the preparation of income tax returns.

4 So, we believe that does encompass registration. Each
5 qualified tax preparer should register with the
6 administrator and obtain a unique ID number. Those
7 preparing returns without that valid license would be
8 prohibited and subject to penalties.

9 Also, as it relates to compliance checks,
10 we do believe that there should be a check prior to
11 registration to ensure that the applicant is indeed
12 current on their own tax filings. Anyone who is not
13 current on their own tax filing or who is currently
14 suspended or disbarred should be ineligible for
15 registration. Also, in this and for the taxpayer
16 population, the public outreach and awareness campaign
17 is critical, I mean as I mentioned before, it's critical
18 to understand what the program is and any limitations
19 around it.

20 So, number five, the fifth design element
21 relates to the administering body. And we believe that
22 the administering body should be granted the ability to
23 create, amend, implement and enforce the rules. And it
24 should be funded primarily through a reasonable annual
25 assessment on the tax preparers.

1 We believe that the most important
2 criteria in looking at this administrating body are the
3 following criteria to be considered: That it's a, you
4 know, a guaranteed long-term focus on this initiative.
5 That there are sufficient and sustainable resources
6 applied to this initiative. That it's flexible and
7 responsive to emerging issues in the industry. And that
8 there is operational efficiency and cost effectiveness.

9 Now, while H&R Block and Jackson Hewitt
10 both agree on those foundational criteria, we
11 respectfully differ on the outcome and the type of
12 administrating body who fulfills these criteria.
13 Whether it be the self regulatory organization which H&R
14 Block recommends or a government agency as Jackson
15 Hewitt prefers, we do believe and agree on the initial
16 criteria. We do believe regardless of the kind of
17 regulatory structure that is put in place that it must
18 coordinate with existing standard setting bodies to
19 produce efficiencies and consistent tax preparer
20 standards.

21 So, in conclusion, we, H&R Block and
22 Jackson Hewitt, believe the guiding principles and the
23 design elements that I have described outlined here
24 today are critical to the establishment and success of
25 such a national program. We look forward to working

1 with the Internal Revenue Service and the industry
2 stakeholders to bring such a program to life for our
3 industry, our employees and to the US taxpayer. Thank
4 you for your time today.

5 DIRECTOR HAWKINS: Thanks, Amy. That was very
6 helpful.

7 The next speaker is Antonio Zabaneh. And
8 Mr. Zabaneh began his career at H&R Block as a
9 bookkeeper and a tax preparer about 21 years ago it
10 looks like. He now is a multi-unit franchisee with
11 branches in Illinois, Missouri and Iowa. And Tony holds
12 a Bachelor's degree in Business Management from the
13 University of Louisiana.

14 MR. ZABANEH: Good morning. Thank you,
15 Director Hawkins. And thank you for giving me the
16 opportunity to participate in today's forum. My name is
17 Tony Zabaneh and I'm a small business owner, franchisee
18 and tax professional with H&R Block. I fully support
19 the Internal Revenue Services tax preparer initiative
20 and very much appreciate your intentional outreach to
21 small stakeholders like me.

22 Preparing an accurate return and gaining
23 the trust of clients have been the hallmark of H&R Block
24 since Henry and Richard founded our company 54 years
25 ago. Likewise, the success of my business depends on

1 the quality and expertise of my services. That's why
2 I've been a franchisee with H&R Block for the last 21
3 years.

4 Through Block's expensive training
5 program, my tax professionals receive the critical
6 training needed to meet and exceed their client needs.
7 Specifically, the Block program requires new tax
8 professionals to take 69 hours of basic income tax
9 preparation and achieve a final exam score of 80 percent
10 or better before employment. Additionally, our tax
11 professionals by contract are required to complete a
12 minimum of 24 hours of continuing education, 12 hours of
13 soft skills training, 3 hours of ethics training, and 3
14 hours of bank agency training annually before they are
15 rehired.

16 When my clients return each year and when
17 they refer others to my business, it reaffirms the
18 quality of this training program and the accuracy and
19 trustworthiness of my tax professionals. However, H&R
20 Block's second-look program has taught me that this is
21 not the case across the tax industry. For this reason,
22 I am in full support of this initiative addressing
23 standards for all tax preparers. But as a small
24 business owner and tax professional myself, there are a
25 few key thoughts that I'd like to share with you today.

1 First, cost. Understanding that there
2 will be cost involved in a national program, I believe
3 cost should never create a barrier to entry for any tax
4 preparer. Cost should not result in a significant
5 impact to the small business owner, tax preparer, or the
6 taxpayer who could eventually bear the brunt of these
7 new expenses. Specifically, here is where I see a
8 national program potentially increasing cost:
9 duplication of current investment.

10 I am currently required by contract, as
11 I'm sure some of the others, to provide a comprehensive
12 tax education program to my tax professionals. I'm
13 concerned that a new system would duplicate the
14 thousands of dollars I already invest each year in
15 training and certification of my tax professionals. To
16 avoid these duplicated costs, I would recommend or I'd
17 like to recommend that successful tax education programs
18 like H&R Block's and similar certification and education
19 programs by other qualified organizations be reviewed
20 and approved by the governing agency with any needed
21 refinements as meeting the education and testing
22 standard requirements.

23 Registration fee. I'm willing to support
24 the payment of a registration fee if I know that it's
25 inclusive of the cost of administering and governing the

1 registration of a hundred percent of the paid tax
2 preparer community as well as enforce any and all
3 standards set by the governing agency.

4 Early registration. I recommend that the
5 program be built so as to make it easy for me to
6 register my 150 tax professionals. Tax preparer
7 employers should be enabled to become the conduits for
8 registration information to help minimize the cost of
9 processing thousands of individual registration
10 applications. Additionally, the program should make it
11 easy for me to check online to see if my people are
12 conforming to registration requirements or if a new hire
13 is properly registered and ready to go to work.

14 In return, I believe small business
15 owners when faced with potential registration and
16 educational costs of this new program will wonder what's
17 in it for me. Therefore, I'd like to recommend the
18 following:

19 Effective reinforcement. Enforcement
20 needs to be the pinnacle of this program. Rules that
21 are broken really aren't rules unless they're enforced.

22 For this program to be successful, it needs to have
23 teeth enough to respond to gaps in our industry and show
24 that it is responding.

25 Penalty assessment. In addition to

1 sanctions and license removals, I would like you to
2 consider a variable assessment penalty based on the tax
3 preparer's client base. A \$500 penalty might have a
4 completely different impact on a tax preparer that
5 serves 50 clients versus a tax preparer who serves 500
6 clients.

7 Follow up information. As an employer of
8 tax return preparers, I would like the program to
9 provide me with critical information about my tax
10 professionals for effective follow up, retraining and
11 compliance purposes.

12 I feel very strongly that a national
13 registration program should be applicable to all tax
14 preparers, paid or unpaid preparers associated with VITA
15 or AARP. However, I am comfortable with the Circular
16 230 tax preparers, CPAs, enrolled agents, attorneys
17 being exempt from the initial exam as long as they are
18 required to meet the continued education requirement of
19 year over year tax law ethics and administrative
20 changes.

21 In conclusion, at H&R Block, we believe a
22 national oversight program will help to protect the
23 interest of all taxpayers by ensuring a high level of
24 competence and consistency across the industry. It will
25 take working in partnership with companies like H&R

1 Block and with small business owners like me. It will
2 take effective enforcement to ensure everyone is playing
3 by the same rules. And it will take effective and
4 efficient use of resources.

5 If we stay focused on improving industry
6 standards to protect taxpayers and put taxpayers'
7 interests first, I believe this initiative will
8 accomplish its intended goal and we will be proud of the
9 role we play as the taxpayer advocates. Thank you.

10 DIRECTOR HAWKINS: Thank you very much. The
11 next speaker is Marianne Moe. Ms. Moe is a Jackson
12 Hewitt tax service franchisee, has been with Jackson
13 Hewitt for over 20 years where she began as a regional
14 director. She actually began her tax preparation
15 career, however, at H&R Block, so she's a cross-dresser.
16 Marianne holds a Bachelor of Arts degree from Carroll
17 College in Helena, Montana and she is an enrolled agent.

18 MS. MOE: Deputy Commissioner Ernst and
19 Director Hawkins, good morning. My name is Marianne
20 Moe. I've been involved in various capacities in the
21 tax preparation industry for over 30 years. For the
22 past 21 years, I have operated 10 Jackson Hewitt
23 franchise offices in the western suburbs of Chicago. My
24 offices are open year round and I employ about 70 tax
25 preparers. In 2008, these offices prepared and filed

1 approximately 5,000 returns on behalf of our clients.

2 I am here today to offer my strong
3 support for implementation of a federal standard that
4 will require registration and qualification for all tax
5 preparers regardless of their level of professional
6 education or expertise. Tax preparers play an important
7 role in ensuring that tax returns are properly prepared.
8 There is no exception to this rule. And because of
9 that, I believe all tax preparers should be held to a
10 high standard.

11 I've seen countless examples of poor tax
12 preparation during my career. Too many times customers
13 have come into my office as a result of a bad experience
14 with an unscrupulous preparer or after they have
15 received an audit letter from the IRS for mistakes that
16 should never have occurred. A lot of preparers simply
17 are not educated in state and federal tax law which
18 leads to countless mistakes.

19 For example, a customer came in to one of
20 my offices earlier this year after receiving an audit
21 letter from the IRS. It seems her original preparer
22 reported her tip income on a Schedule C although her tip
23 income had already been reported on her W-2. This led
24 to the customer paying Social Security and Medicare
25 taxes twice, and then also to pay again on that same

1 income to the federal and state governments. Once one
2 of my preparers unraveled the error, the customer was
3 owed a \$962 refund. With proper preparer education,
4 situations like this could be avoided.

5 I am confident that any client who comes
6 into one of my offices receives competent and courteous
7 tax preparation services. Throughout my tenure in the
8 industry, I have conducted tax schools and required
9 preparers in my office to complete education
10 requirements that exceeded those maintained by others in
11 the industry. I feel so strongly about this that I have
12 often paid preparer training out of my own pocket.
13 These efforts have paid off. My offices have maintained
14 a perfect record of never having had preparer penalties
15 consequences on any return.

16 What I have just described are my own
17 personal views in tax preparer education and training,
18 but they are mirrored by Jackson Hewitt. Jackson Hewitt
19 requires all of its preparers to receive robust training
20 in changes to federal and state tax laws. Company
21 preparers also receive ethics training and are required
22 to abide by a code of conduct. Although Jackson Hewitt
23 and some other tax preparation companies maintain
24 training and ethics standards, many preparers do not.
25 This leads to inconsistency across the industry with

1 respect to compliance with the tax laws.

2 This lack of consistency in the tax
3 preparation industry also provides opportunities for
4 some taxpayers to shop tax preparers, seeking a preparer
5 that will allow them to file their tax return without
6 being required to answer due diligence questions or even
7 provide necessary documentation including their W-2's.
8 I believe this behavior on the part of some tax
9 preparers and taxpayers can be reduced or even
10 eliminated by establishing an enforceable federal
11 standard that requires registration and qualification of
12 all tax preparers.

13 For preparers that I've employed, I
14 believe the standards should focus in five specific
15 areas:

16 Number one, transition. Transition to an
17 operation of the new federal standard must be seamless
18 and transparent to the taxpayer community. For some
19 taxpayers, filing their annual tax return is the largest
20 financial transaction they undertake. Preparers and the
21 IRS share a responsibility to ensure that the
22 preparation and processing of tax returns, tax payments,
23 and refunds are handled properly and without delay.

24 Seamless integration and operation of a
25 registration system will carry the same responsibility.

1 As a small business owner, I'm keenly aware that my
2 business can ill afford the potential damage with
3 reputation if errors occur in a registration system that
4 leads to returns being rejected and preparers being
5 wrongly tagged as with our client. If this effort is
6 undertaken, it is essential that it can be done right
7 the very first time.

8 Number two, outreach. The IRS should
9 partner with preparers on an education and outreach
10 program focusing on the benefits this new standard will
11 bring to taxpayers and to the tax preparation industry
12 as a whole. The outreach program should seek ways to
13 enlist tax preparers and the public in an effort to
14 monitor the profession so that the actions of
15 unscrupulous preparers are quickly brought to the
16 attention of the IRS for enforcement action.

17 Three, burden. The financial and
18 paperwork burden placed on the preparers to comply with
19 the federal standard should be kept to a minimum so that
20 the standard is not perceived as an impediment to
21 encouraging individuals to become tax preparers.

22 Number four, registration first, then
23 education. The IRS must first require all preparers to
24 register with the federal government. This will provide
25 valuable information regarding the size and the scope of

1 the tax preparer community that will help guide
2 implementation of the education phase of the federal
3 standard. Education and ethics requirements should be
4 put in place as soon as possible following
5 implementation of a registration program. These
6 requirements should apply to all preparers regardless of
7 their professional status or length of service.
8 Experience does not equal competency, and every preparer
9 can benefit from periodic education and testing on
10 elements of the tax law.

11 Number five, enforcement. Effectively,
12 mechanisms must be put in operation the first day of
13 registration and enforcement must be swift and
14 definitive. This may be the most important requirement
15 of any proposed plan because rules and requirements
16 without enforcement will simply add to the problem and
17 perhaps even make matters worse.

18 Once again, I strongly support the
19 federal standard of tax preparer registration and
20 qualification. This is an important step in purging the
21 tax preparation industry of unscrupulous preparers and
22 providing taxpayers with the level of confidence and
23 seal of approval they need to ensure that the preparer
24 they choose provides them competent service backed by a
25 strong commitment to ethics and honesty. Thank you for

1 your opportunity to let me address this forum. I'll be
2 happy to answer your questions.

3 DIRECTOR HAWKINS: Thanks very much. Our next
4 speaker is Cynthia MacIntosh. As I said earlier,
5 Cynthia is an independent business owner, unenrolled tax
6 preparer. She is a member of the Independent
7 Accountants Association of Illinois where she is
8 currently serving as the state's First Vice President.
9 She's also a member of the National Society of
10 Accountants. She is a graduate in Business
11 Administration from Elmhurst College. And Cynthia,
12 we're interested to hear what you have to say.

13 MS. MacINTOSH: Good morning. I am an
14 independent accountant and unenrolled preparer. I thank
15 you for inviting me to participate in this forum.

16 I have been preparing tax returns for
17 clients for over 20 years. I take pride in my practice
18 as do many other unregulated preparers that I know. I
19 keep abreast of tax law changes by participating in
20 numerous education seminars and classes throughout each
21 year. I feel it is my duty and my obligation to my
22 clients, the taxpayers, to be familiar and educated on
23 tax laws that impact their tax returns.

24 I got involved with the Independent
25 Accountants Association of Illinois which is a state

1 affiliate of NSA. NSA's Director Jim Nolan addressed
2 this forum on July 30th. I joined that organization
3 because of its emphasis on education and support for
4 independent accountants. It has been a pleasure
5 participating and serving in the organization. I know
6 we stress education and offer quite a few classes and
7 seminars in order to involve our membership. The IAAI
8 mission statement says we will provide accounting and
9 tax professionals with the very best in education,
10 representation, legislative alertness, cutting edge
11 technology, and opportunities to interact with other
12 professionals.

13 While reading the transcript of the forum
14 held on July 30th, I am saddened and dismayed to see how
15 others of my profession are conducting business. To
16 that end, I must conclude that some level of
17 registration is needed in order to curb these abuses. I
18 invite some form of accountability since I work very
19 hard to provide expertise to my clients. The most
20 important mission for me is to keep focused on my
21 responsibility. My job as a tax preparer is to prepare
22 my client's tax return accurately so that the taxpayer
23 pays the correct amount of tax. I hope that the focus
24 of this panel and these forums is the same.

25 To that end, I see four recurring topics

1 of concern: registration, education of both the tax
2 professional and taxpayer community, testing, and
3 enforcement. As far as registration goes, I see no
4 reason why there can't be one database of numbers
5 corresponding to each individual tax preparer. If you
6 want to preparer a tax return for someone other than
7 yourself, you must be registered with the IRS and given
8 a specific number in that database.

9 A paid preparer return should not be
10 accepted electronically or by paper without valid tax
11 preparer registration number. This would also create a
12 database to which IRS can mail or e-mail announcements,
13 tax law changes, tax law change notices, filing changes,
14 et cetera. It would also provide the vehicle for
15 tracking those preparers that are unscrupulous and
16 downright criminal.

17 One last point here is the need for all
18 tax preparers to sign the returns. This centralized
19 number would provide that signature. After all, we tax
20 preparers should be more than happy to sign our work.

21 With regard to the education of tax
22 preparers, it seems like there should be plenty of
23 opportunity for tax preparers to get a required number
24 of education credits in tax preparation. Between NSA,
25 NATP, NAEA and the IRS forums, just to mention a few,

1 they offer a host of locations, topics, and dates to
2 fulfill educational requirements. There should be no
3 reason why one couldn't comply.

4 This also addresses the issue of
5 attorneys, EA's and CPA's who don't prepare tax returns.

6 They obviously would not maintain a registration
7 number, therefore, not prepare returns since they
8 probably wouldn't acquire the required education credits
9 in order to prepare returns. This addresses the issue
10 broached by Ms. Hawkins herself and the suggestion made
11 by Ms. Beady in the July 30th forum regarding not
12 exempting attorneys, EA's and CPA's.

13 There is no reason why anyone should be
14 treated differently based on their credentials. There
15 are many CPA's, EA's and attorneys who have absolutely
16 no business preparing tax returns. This way, at least
17 we know that registered preparers have taken steps to
18 remain prepared each year.

19 As far as educating the taxpayer goes, I
20 feel strongly that a public campaign be it PSA's, news
21 outlets and as much free publicity as possible be put
22 forth. I seem to remember the California Tax Education
23 Council had discussed their experience in this at a
24 previous forum. I commend them for raising awareness on
25 this issue. I know that IAAI would welcome an

1 opportunity to help publicize and get the word out.

2 On the subject of testing, I don't see
3 any reason why some testing vehicle can't be
4 implemented. However, I feel that an initial test
5 should be passed by everyone and continuing education
6 should take over from there. I don't think CPA's, EA's
7 and attorneys would like to retake their tests each year
8 in order to practice their profession. However, they do
9 require continuing education to maintain their license.

10 As stated earlier, I don't have a problem
11 with yearly educational requirements due to the changing
12 tax law that seems to happen monthly now. Please let me
13 also say that in regard to testing, you have a few very
14 good exams to look at. Of course my bias is ACAT which
15 is the Accreditation Council for Accountancy and
16 Taxation. That offers the ABA, ATP and ATA
17 designations. The exams are comprehensive and they
18 focus on tax aspects related to the size of clients and
19 tax situations that the majority of tax preparers will
20 handle.

21 As to enforcement, I believe that
22 Circular 230 should be scratched. I am not paid by the
23 IRS. I am paid by my client to assist them in preparing
24 their tax return accurately and calculating their tax
25 due correctly. I interpret the tax law from my client's

1 situation. I do not feel I should be an auditor for the
2 IRS. I challenge anyone reading the Circular 230 to not
3 come to that conclusion.

4 A new set of regulations should be
5 developed based on the new rules and regulations
6 eventually suggested by the IRS and voted into law by
7 Congress regarding the registration of preparers.
8 Between the Circular 230 and the individual IRS
9 penalties on record to date, I believe there should be
10 enough tools already drafted for enforcing violations to
11 the new law. There is no one size fits all here.
12 Remember, I don't think your intention is to change the
13 role of the tax preparer; the goal is to protect the
14 taxpayer which is all our goal.

15 I hope that you can understand my
16 position as an independent accountant and tax preparer.
17 It seems like I fall in the majority of tax preparers;
18 unfortunately, there are some in my group as well as the
19 regulated group that exhibit bad behavior. I see the
20 need to identify those and restrict them from preparing
21 tax returns for others. But remember, passing a test
22 won't change the character of these individuals.

23 Finally, it has been my pleasure to
24 participate in this panel. I commend your effort to
25 include all facets of tax preparation from governmental

1 agencies, low income volunteer organizations, tax
2 preparer organizations, and tax preparers, enrolled or
3 not. And I look forward to the outcome. Thank you.

4 DIRECTOR HAWKINS: Thanks very much, Ms.
5 MacIntosh for your comments. Our last speaker is
6 Raymond Heinen. Mr. Heinen is currently associated with
7 Thoma & Associates in Columbia, Illinois. He holds a
8 Masters in Healthcare Administration and is a Fellow at
9 the American College of Healthcare Executives. He's an
10 adjunct faculty member of the Maryville University of
11 St. Louis. Mr. Heinen?

12 MR. HEINEN: Ms. Hawkins, Mr. Ernst, thank you
13 very much for the opportunity to participate in this
14 forum.

15 It has been my privilege to work in the
16 professions of the military, medicine, insurance, and
17 now tax preparation. I submit that the IRS must
18 consider the impact of both licensure and credentialing
19 on this evolving profession of tax preparation. They,
20 licensing and credentialing, are not synonymous.
21 However, they are often confused by and confusing to the
22 public.

23 Each of the aforementioned professions
24 has elements of both licensure and credentialing as well
25 as continuing education. In the military, an enlisted

1 person and an officer takes an oath of "I solemnly swear
2 to support and defend our country." This oath binds
3 them to a code of conduct in the profession of arms in
4 support of our country and our freedom. Only then are
5 they provided with the training that equips them to
6 fulfill that oath.

7 In the case of Air Force pilots, they
8 must undergo undergraduate college degree education,
9 undergraduate pilot training, training in specific
10 aircraft, and periodic renewal or licensure by
11 undergoing check rides from designated qualified testing
12 officials. Continued training and proficiency are
13 required. And we all witnessed the value of that
14 training on behalf of Captain Sullenberger just a few
15 weeks ago.

16 The insurance industry through state
17 licensure laws licenses personnel in the disciplines of
18 property, casualty, life, health and excess lines. In
19 order to qualify for these licenses, a person must take
20 courses which prepare him or her to take the qualifying
21 test in each of these disciplines. Reciprocity is
22 available between most states. There are a number of
23 credentials which insurance personnel usually pursue.
24 Two of the most frequently used are the CPCU which
25 stands for Charter Property Casualty Underwriter, and

1 the CLU, the Charter Life Underwriter. These
2 credentials require further study and testing to achieve
3 the designations first of all, and secondly, continuing
4 education is required to maintain those credentials.

5 In medicine, there is a plethora of
6 training, education and credentialing mechanisms. For
7 instance, allopathic physicians undergo many years of
8 training at the undergraduate school level, medical
9 school, rotating internship, special residency, and
10 fellowship levels. Such a physician may spend between
11 three and ten years in training beyond the basic
12 Bachelor's degree. However, each of them signs their
13 name with M.D. after it, and they are all referred to as
14 Doctor. As we all know, adding to the confusion is the
15 fact that osteopathic physicians, chiropractors,
16 dentists and veterinarians are also accorded the title
17 Doctor as well as Ph.D.'s.

18 Consider the fact that medicine has been
19 in practice since the Middle Ages and continues to grow
20 in sophistication, each state with varying levels of
21 credentialing expertise, oversight and sophistication
22 awards licenses to practitioners of the healing arts.
23 Supervision of these practitioners is another matter.
24 Oddly enough, loss of licensure in one jurisdiction or
25 venue does not mean loss of licensure in another.

1 Incidentally, although every physician has M.D. after
2 his or her name, we probably would not ask a urologist
3 to set our arm or leg. Specialty boards require
4 continuing education for recognition. Somewhat
5 synonymous to where we may go with the IRS and tax
6 preparation industry.

7 Please allow me to dispel or at least
8 question some of the assumptions which may have crept
9 into the dialogue regarding the unenrolled preparer
10 community. Number one, because they are unenrolled,
11 they are either unprepared or uninformed. Secondly,
12 because they are unenrolled, they are incompetent or
13 fraudulent. Thirdly, because they are unenrolled, they
14 are unscrupulous or corrupt. Four, there is little or
15 no difference between human error and criminal behavior.

16 Five, enrollment will solve all the problems of tax
17 administration. And finally but not least, because a
18 person holds a degree, license or credential, they are
19 de facto qualified to perform in that discipline.

20 I do not believe licensure or
21 credentialing will ferret out all of the unprofessional
22 practitioners or fraudulent behavior. Only scrutiny of
23 the returns processed and prosecution of offenders will
24 root out fraud. I would like to go on record as
25 supporting a mechanism for either licensing or

1 credentialing tax preparation professionals. A
2 comprehensive tax administration program for
3 practitioners might include the following:

- 4 *Background checking to discover disqualifying past
- 5 behavior, especially financial behavior
- 6 *Initial training and certification by the IRS or
- 7 multiple providers which meet IRS guidelines
- 8 *Selection of multiple testing facilities if not
- 9 accomplished by the IRS
- 10 *Licensure/credentialing in a specific area of tax
- 11 preparation
- 12 *Training and continuing education required for re-
- 13 licensure
- 14 *Periodic retesting
- 15 *And finally, Office of Professional Responsibility
- 16 Oversight.

17 If a licensure or registration option
18 evolves, perhaps it can take the form of many state
19 vehicle licensure laws, wherein licenses are awarded
20 based on levels of complexity of driving skills needed
21 and the threats of harm to self and/or others. Many
22 states qualify drivers to operate a variety of vehicles
23 from motorcycles to commercial vehicles. Varying levels
24 of training and testing are required for each type of
25 license held. Periodic retesting and requalification is

1 required. Perhaps this is an option for consideration
2 as the IRS goes by improving service to the public.
3 Areas of expertise may include individual returns,
4 individual returns with schedules, employment returns,
5 pass-through entity returns, partnerships and
6 corporations, exempt organizations, and specialty
7 returns.

8 Thank you for allowing me to present one
9 man's opinion. I believe that freedom is not free. It
10 is paid for with the blood of patriots. Our government
11 and way of life are not free either. They must be paid
12 for, hopefully by every participant in our democracy on
13 an equitable basis. Vigilance is the price of freedom.
14 Oversight is the price of equitable tax administration.
15 Thank you very much.

16 DIRECTOR HAWKINS: Thank you, Mr. Heinen and
17 thank all of you.

18 (Applause.)

19 DIRECTOR HAWKINS: We will start the
20 questioning as we did in the last one. I guess I'll
21 open it up. There seems to be a disparity of positions.
22 I just want to get some clarification on what I would
23 call the grandfathering issues. Again, as I have
24 traveled mostly through doing these town halls, there
25 are folks that I am running into who have long

1 credentials as you all do and long time experience in
2 preparing returns who have chosen, for whatever reason
3 or other, not to take an enrolled agent examination who
4 feel rather strongly. I think particularly about the
5 gentleman in Las Vegas I ran into who had been preparing
6 tax returns for 40 years who felt pretty strongly that
7 he shouldn't have to test in to any kind of a process
8 that we create. He was fine with being given a number
9 but testing in, he didn't think he had to prove his
10 competency.

11 I'd like each of you, some of you have
12 said something about this, some of you have not said
13 anything about that. I'd like a little more
14 elaboration, particularly from those of you who have 20
15 plus years in the business about your feelings about
16 suddenly having to be tested on your minimum competency.

17 MS. MOE: Well, I could start with that. I
18 absolutely believe that we should not have any
19 grandfathering. I think that if you're going to be a
20 tax profession in this business, then you shouldn't have
21 any trouble taking some type of initial test or exam.
22 Just because you, again just because you have experience
23 doesn't mean that you're competent. It doesn't mean
24 that you've kept up. You might have kind of let your
25 updating slip a little bit. Maybe you're just looking

1 at the highlights in the Pub 17 that come around. Maybe
2 you're not an active member of any organization.

3 There's any number of items out there that could happen.

4 And I would ask again, I guess to me it's
5 a sort of an arrogance why one person would feel that
6 they should be exempt when everyone else needs to follow
7 the standard. I think it's going to be very difficult
8 for us to start this off with everyone, this whole pool
9 behind us, that are part of the new group. And until
10 that part leaves us, then I guess it never will be what
11 it should be. So, the only way to do this is to bring
12 everybody in at the same time with the same
13 qualifications.

14 MR. ZABANEH: I oppose that view. I think
15 that folks that have registered with Circular 230 or
16 CPA's, attorneys, have proven to a certain degree a
17 minimum level of competency in this field, and therefore
18 should be exempt from initial testing. That does not
19 preclude them from additional certification or continued
20 education year over year. But the initial testing
21 process, I believe they have already proven a certain
22 level of competency.

23 MS. MacINTOSH: I would tend to agree with
24 Marianne. To me, the way I understand it, attorneys,
25 they don't have any specific requirements for tax

1 education. CPA's, I think the rules say they need to
2 have so many hours or they don't have any rule that
3 states how many hours they have to have on tax. EA's,
4 they're given certain rules on how many hours they have
5 to have on ethics, but I don't believe it mentions how
6 many hours they have to have on tax.

7 So, having an EA for a long period of
8 time, having a CPA to me doesn't mean that they are up
9 on tax law and that they are competent enough to prepare
10 tax returns. And like Marianne said, if you are doing
11 tax returns and you go through the education and you
12 keep up on all that information, then you're probably
13 not going to have too much of trouble passing an exam
14 the first time.

15 MS. McANARNEY: And as I said in my statement,
16 we also, as Tony mentioned, we believe that Circular 230
17 should pre-qualify from initial exam, primarily also
18 because of the ethics, code of ethics that they aren't
19 going to take on board if they can't do.

20 I also want to show another bit of data,
21 so we actually went out to our tax professionals of H&R
22 Block and we gave them kind of a quick ten-question
23 survey about this. And we asked the question of should
24 anyone be grandfathered from this program? And they
25 could answer yes or don't have a strong opinion or no.

1 And 60 percent agree that there should not be a
2 grandfathering clause.

3 DIRECTOR HAWKINS: For anybody?

4 MS. McANARNEY: Right. Don't have a strong
5 opinion, that was 19 percent. So, roughly 80 percent
6 agree that there should not be grandfathering from the
7 entire program.

8 MS. MOE: You know, Cynthia was bringing up
9 this point about the education requirements, and you
10 know, a CPA might be a person who does tax. They might
11 strictly be a person who is doing accounting and
12 auditing. And when they're taking their CPE updates,
13 that's the area they're focusing in. They're not doing
14 tax. And quite frankly, sometimes I'm a little
15 outspoken, I've seen some not very competent returns
16 come through my offices that were prepared by a CPA.

17 And again, I believe it's just the idea
18 that their focus is maybe in a completely different
19 matter. Same thing with attorneys. Oftentimes, again,
20 just because you have the credential doesn't necessarily
21 mean you are presently or currently able to back it up.

22 DIRECTOR HAWKINS: Okay. Let me shift the
23 focus just a little bit and ask, you heard us talk about
24 this a little bit in the first panel, my concern about
25 how it is that we educate the taxpayer to be looking for

1 properly registered and presumably down the road
2 properly credentialed tax preparers. Have any of you
3 given any thought to not just the fact that yes indeed
4 we must educate them? I think there is no discussion
5 about that, but after a period of education and
6 awareness, do you think that there should be any
7 consequence to the taxpayer for not paying attention or
8 should the burden always rest with either the paid
9 preparer or the IRS to try and catch the people who
10 aren't registered?

11 MR. HEINEN: I'd be happy to respond to that
12 particular question. I think, first of all, the
13 taxpayer first and foremost is responsible already
14 because do we not understand that the taxpayer has to
15 sign the return, they send it in, and who gets the first
16 letter? The taxpayer gets the first letter, the first
17 notice. So, I think that aspect of the suppression
18 methodology is already in place.

19 I think what you're proposing here today
20 is moving from the caveat emptor philosophy of having
21 people independently go out and choose their preparer.
22 You're now professing an opportunity for them to have
23 some guidelines in how to do that. I'm not sure if
24 people have always had that available to them,
25 especially those who are not educated enough or need the

1 level of sophistication that requires someone to provide
2 them advanced tax preparation knowledge.

3 DIRECTOR HAWKINS: Any of the rest of you have
4 any comments about that?

5 MR. ZABANEH: I think the taxpayer community
6 is a pretty dynamic community in that they are folks who
7 are self preparers, DIY's for the most part, and
8 occasionally migrate to a tax preparer for a complicated
9 situation. And in situations like that, I think they
10 need to understand that a tax preparer should be
11 licensed to be able to help them. But the ultimate
12 burden I believe should rest on the taxpayer and
13 educating them should last over a long period of time, I
14 believe. I think it's going to take a long period of
15 time for us to, before we can start penalizing them for
16 not following the rules so to speak.

17 DIRECTOR HAWKINS: One of the issues that we
18 got into at the beginning of our research project that
19 hasn't come up recently but, as I particularly listened
20 to you all, comes back to mind for me, and that is the
21 issue of what we're calling a preparer. We've pretty
22 much I think evolved into thinking that that meant the
23 paid preparer, the person who signs the tax return. But
24 as I'm thinking about how I imagine many of your
25 businesses are running, there must be people inside who

1 are preparing those returns and not signing them because
2 you don't think they're ready. So, someone else is
3 signing them. I think I'm right about that. I spent
4 four years at Touche Ross and that's kind of how it
5 worked for me. I couldn't sign a return until they felt
6 I was safe to leave me on my own.

7 And so, is there, do you have any thought
8 about, should we be trying to capture those people
9 behind the scenes who are putting the numbers on the
10 forms as preparers? Or are we okay just dealing with
11 the person who signs it and holding them accountable for
12 all their employees?

13 MS. McANARNEY: Actually, we talked about that
14 a lot, Jackson Hewitt and H&R Block, around this exact
15 issue. And we came down to the fact that really, it
16 would be really hard to track and enforce who all is
17 touching different parts of the return and where do you
18 draw the line. So, to make it simple because I think
19 it's important that for this whole program there needs
20 to be a simplicity element that there is one point of
21 accountability and that is the person who signs the
22 return.

23 MS. MacINTOSH: I would tend to agree with
24 that. I know when I prepare a financial statement for a
25 client of mine, if somebody else did the data entry for

1 me, that's fine, but I have to sign that accomplished
2 report that goes on that financial statement. And
3 that's my name on there, those are my statements that
4 I'm giving the client. So, that's my responsibility.
5 And my job is to check that work to make sure that data
6 entry was correct, and the same would happen with the
7 tax return. I'm signing that return, no matter who
8 input that data, I have to review it and go over it and
9 make sure it's right.

10 DEPUTY COMMISSIONER ERNST: So, can I pick up
11 on that? And maybe, I heard a theme in a couple of your
12 comments about kind of the role that a tax preparer is
13 playing as this person in between the taxpayer and the
14 government. And I heard this one comment that said, you
15 know, the Circular 230 is too onerous of a standard in
16 terms of what's expected. I heard another comment that
17 said, you know, tax preparers are effectively taxpayers'
18 advocates.

19 I'm interested in your thoughts on what
20 use that role that a tax preparer is or should be
21 playing and what accountability does that person have to
22 the two parties that they stand in between? What
23 responsibility do they, should they have toward not just
24 the taxpayer but also to the government?

25 MS. MOE: Well, I believe that as a tax

1 preparer, that we have a responsibility to our client,
2 obviously to help them prepare the most accurate return
3 that we can for them, you know, giving them the
4 advantages that all of the tax code offers. But I also
5 believe that we also have a very serious responsibility
6 to the government of the United States because we are in
7 a position where we are helping to collect revenue and
8 ensure that what is going forward is accurate. So, I
9 think we wear two hats in this and I don't think it's,
10 that's why I think it's really important for education
11 and registration and responsibility and ethics training
12 because we do wear two hats. And I think that's why it
13 works.

14 DIRECTOR HAWKINS: Mr. Heinen, you were also
15 trying to say something?

16 MR. HEINEN: It also helps if we're a bit
17 schizophrenic because we do wear two hats. We do have a
18 responsibility to the Federal Government to assist in
19 collecting the appropriate amount of tax. And you have
20 a rather large organization to see that we do that. On
21 the other hand, it's the individual taxpayer who is
22 paying us to help them accomplish what Justice Blackmun
23 said we should try to do, and that is no man or woman
24 should pay more tax than the law requires him or her to
25 pay. So, we do have a bifurcated responsibility here to

1 both ends of the spectrum. And I think that most
2 intelligent, responsible preparers take both of those
3 responsibilities very seriously.

4 DEPUTY COMMISSIONER ERNST: So, we know for
5 example that CPA's, attorneys have as part of their kind
6 of professional licensure and code of ethics an
7 obligation to the public in the work they do. And I'm
8 interested in, again back to the comment that said, you
9 know, the standard of Circular 230 which really sweeps
10 up that group or those groups is too onerous and should
11 not be the standard for tax preparers.

12 MS. MacINTOSH: I understand what you're
13 asking, and my feeling is that my client, the one who
14 pays me, is who I am working for. Now, I will do
15 everything in accordance with the tax law as I have
16 interpreted it for my client in that situation. As far
17 as, and one of the things I spoke to was enforcement of
18 the tax preparers that are unscrupulous and that do
19 things that are just beyond horrible, with the
20 registration of tax preparers and having them all have
21 their specific number, I think that over time these
22 abusive preparers will be identified. And to that end,
23 then those people will have enforcement on them based on
24 whatever law comes along to regulate and register tax
25 preparers, that there will be some kind of penalties and

1 suspension and not being able to prepare tax returns
2 anymore.

3 DEPUTY COMMISSIONER ERNST: So, sorry, and I
4 will probably broaden it but I don't want to give up on
5 this just yet. So, we have standards, due diligence
6 standards for example around the EITC. That's a
7 standard that is only applicable to tax preparers. If
8 you're a do-it-yourselfer, you know, sort of plan
9 whatever situation is your situation. So, we have some,
10 you know, kind of standards that have been established
11 that, you know, that people in this position are
12 expected to follow. I guess, you know, is the notion of
13 the IRS having a greater sense of what we would expect
14 due diligence to look like be something that you believe
15 is useful to sort of clarify kind of the role of tax
16 preparers? Or is that, you know, taking too much
17 judgment out of your hands?

18 MS. McANARNEY: So, I actually think it's
19 helpful. And from an H&R Block perspective, we have
20 specific training around due diligence when it comes to
21 EITC. And a lot of that comes from some of the guidance
22 that we receive from IRS that say, hey, if you ask some
23 of these key questions, that will help clarify the
24 situation. So, and we know that that's an area that's
25 subject to a lot of fraud or a lot of misinterpretation.

1 So, the more that we can help understand and interpret
2 some of those areas and then apply that to the program,
3 you know, we do that today and it's helpful.

4 DIRECTOR HAWKINS: I'd be curious to know
5 whether any or all of you feel that the current, you
6 talked a lot about enforcement, strong, timely, swift
7 enforcement. I didn't hear anything about due process
8 in there, but being a lawyer I worry about that aspect
9 of it. So, I have a couple of questions in the
10 enforcement area, the first being I suppose do you think
11 that the existing penalty regime that deals with
12 preparers in a variety of ways in the Internal Revenue
13 Code, if enforcement was perhaps stepped up a bit
14 because I think we all think that maybe enforcement
15 isn't as high as it should be currently with respect to
16 those preparer penalties, do you think that penalty
17 regime is the idea you were thinking about for the swift
18 enforcement?

19 MS. MacINTOSH: I think the preparer
20 penalties, I think that's a fine idea. When I said, you
21 know, scratch Circular 230 earlier which I think has --

22 DIRECTOR HAWKINS: I was not offended.

23 DEPUTY COMMISSIONER ERNST: I am not offended.

24 DIRECTOR HAWKINS: He is.

25 DEPUTY COMMISSIONER ERNST: I'm not offended.

1 I'm just trying to understand.

2 MS. MacINTOSH: No, there are some parts of
3 Circular 230 which are just fine the way they are. It's
4 just that I don't think that the idea is that you can
5 leave Circular 230 as it stands right now and then apply
6 it to whatever tax law and regulations we're going to
7 end up coming up with. So, you know, I didn't mean just
8 throw it out the door right now.

9 DIRECTOR HAWKINS: Perhaps I didn't articulate
10 it, I'm trying to understand when you all talk about
11 enforcement, are we, who are we talking about enforcing?
12 What kind of enforcement are we talking about is really
13 where I'm heading. And so, is the penalty regime one
14 way to enforce? Is Circular 230 or some equivalent
15 watered down version or whatever you want to call it of
16 Circular 230 the way that you deal with conduct, ethical
17 conduct versus just the actual preparation the way the
18 IRS wants to see it done under Title 26? Help me here
19 in terms of how you think about enforcement.

20 DEPUTY COMMISSIONER ERNST: Or do we need a
21 mechanism in fact to act much more quickly than what
22 that process allows?

23 MS. McANARNEY: So, when we discuss the
24 enforcement mechanism, a lot of the feedback was, and as
25 we talked to some of our tax professionals, that, you

1 know, there needs to be a strong enforcement. You know,
2 if you get a phone call or if the governing body gets a
3 phone call around, hey, the tax preparer down the road I
4 know is not, you know, holding their own from an
5 integrity and ethics standpoint, that we need to be able
6 to react on that, investigate it pretty quickly. As we
7 took a look at the different enforcement mechanisms
8 today, and this doesn't mean any disrespect at all to
9 what's in place today, but we want to make sure that
10 there are sustained resources that maybe aren't subject
11 to, you know, an appropriations process every year, that
12 we have a separate group that can be focused on
13 enforcement, that priorities aren't diluted year over
14 year or maybe every three or four years.

15 And so, that's why we have said we want
16 it to be kind of a separate, really strong group around
17 enforcement. I don't know if that answers your
18 question.

19 DEPUTY COMMISSIONER ERNST: So, one of the
20 concerns, so to continue down that path, one of the
21 concerns I think that we've had because we've heard this
22 issue raised quite a bit about the need for strong
23 enforcement, stronger enforcement, is the risk that IRS
24 enforcement becomes a competitive weapon to say I don't
25 like the fact that I have competition next door so I'm

1 going to, you know, see if I can get the IRS to do
2 something about them. And we could quickly find an
3 enforcement mechanism that, you know, can't keep up with
4 all the demands on investigating and acting quickly
5 because it's a short season.

6 MS. MOE: I think also, first of all, let's
7 just take it from a registration point of view. If you,
8 you know, when you have everyone in this pool now and
9 they want, you know, they want to prepare returns, the
10 season is coming up, they need to have met their, you
11 know, their education requirements and they need to have
12 fulfilled whatever those requirements are going to be.
13 And if those aren't met, then they should not be allowed
14 to prepare. I mean, I think when we're talking about
15 enforcement, we're just talking about the really simple
16 levels here.

17 DEPUTY COMMISSIONER ERNST: Okay.

18 MS. MOE: Certainly, you know, I mean when you
19 find a situation where you've got ethics violations,
20 there needs to be immediate kind of, you know, there
21 needs to be, maybe it's not extreme, maybe it's a
22 monetary policy, maybe it goes to fraud and it takes it
23 a whole different way. But I think just from the very
24 beginning, if it's going to work, then it has to be are
25 you registered and did you do your CPE's and if you

1 didn't, then I'm sorry but you didn't meet the
2 requirements. And you know, to me that's I think what
3 most of us are thinking in terms of initial enforcement.

4 MS. McANARNEY: And we'll shut your number
5 down, you can't file.

6 MS. MOE: We'll shut your number down, you
7 can't file. And then when you get yourself back in
8 compliance or whatever, you know, you can do it again.

9 DIRECTOR HAWKINS: Mr. Heinen?

10 MR. HEINEN: Thank you. I think that one of
11 your, I think your question has been addressed by some
12 professional organizations in that they have peer review
13 mechanisms available to members of those organizations.

14 And what happens there is that if a person makes an
15 allegation against someone who is similarly qualified or
16 a member of that organization, then if their proposed
17 remedy is inappropriate, if their complaint is found to
18 be unjustified, then they potentially suffer the same
19 kind of penalty as the person they were proposing
20 against. And this is not really synonymous with that
21 because this is not a peer review organization that
22 we're talking about here. We're talking about a
23 regulatory environment as opposed to a professional
24 organization which is voluntary.

25 DEPUTY COMMISSIONER ERNST: Can I maybe take

1 us to a different sort of line of discussion but I heard
2 a lot of this, and that is sort of the consequences to,
3 ultimately I guess to the taxpayer on cost to the extent
4 that some new structure will put in place. One of the
5 things that, you know, we have observed is that the cost
6 of this service has escalated quite dramatically over
7 the last ten years across the industry. And this, in
8 theory, would have the potential to limit or at least
9 put another barrier up to competition and people
10 entering the industry.

11 I'm interested in, and I also took your
12 comments, Tony, about the cost of doing business and
13 burden quite seriously, so I'm interested in your
14 thoughts on how anything we are considering doing can be
15 done in a way that does not kind of put more cost burden
16 back to business owners, any business as well as
17 ultimately leading and passing through to taxpayers.

18 MR. ZABANEH: I think there are a number of
19 organizations, companies like H&R Block who have very
20 similar programs in place like you're talking about
21 putting in place. And duplicating those systems could
22 end up costing the folks that are already investing in
23 them a tremendous amount of money. What I'd like to
24 propose or I proposed in my comments is that the
25 existing systems that we consider to be successful be

1 put through a review board and determine whether it
2 meets or exceeds or needs to be tweaked to the point
3 where it matches the expectations of the Internal
4 Revenue Service. And in so doing, I think we're going
5 to minimize some of the costs.

6 In fact some of the folks on the first
7 panel talked about education programs that they have in
8 place. And I think a similar program should be put in
9 place for them to be properly reviewed and approved as
10 meeting or exceeding the standards. If we are able to
11 do that, I can see companies like H&R Block,
12 organizations like the National Association of Tax
13 Preparers and so on who have already provided this kind
14 of necessary service continuing in what they're doing,
15 and thus not increasing or duplicating any costs but
16 still fulfilling the requirement of the IRS has now, you
17 know, put in place.

18 So far, we have been self-regulating on
19 this issue. Our company has decided this is what we
20 need to do to maintain standards. And if this become
21 the standard through the Internal Revenue Service, we
22 don't want to have to duplicate them basically. I hope
23 that answers that.

24 DIRECTOR HAWKINS: Sure. Just as a point of
25 clarification, my office right now, because of the

1 enrolled agents population that we oversee, has about 40
2 providers of continuing education. And the process to
3 date anyway has just been that the providers seek our
4 imprimatur for their programs. We don't go in and look
5 at every single program they put together. But once we
6 confirm that they essentially have a system in place
7 that makes sense and that they're putting the kinds of
8 product together that we want, we approve them and we'll
9 periodically check what they're doing. And I would
10 certainly think that there is no benefit for us and for
11 the industry in trying to do all of that ourselves.
12 There are many better people out there and we've
13 already, we already have a mechanism in place that
14 recognizes that process.

15 One of the things that I, if you have
16 some thoughts about this, everybody talks about how
17 there should be a minimum level of competency. Some of
18 you recognize, I think we all have as well, that a
19 minimum level of competency is not going to necessarily
20 ensure that someone can prepare a partnership return or
21 a complex corporate return. But I often don't hear
22 anybody tell me what they mean by a minimum level of
23 competency.

24 What is the absolute minimum that we
25 should be looking for before we say someone is a

1 registered authorized preparer, whatever we're going to
2 call them?

3 MR. ZABANEH: Can I just -- I almost believe
4 that the Service would have to manage this on an ongoing
5 basis based on the type of tax returns that are filed by
6 a specific tax preparer. And having that --

7 DIRECTOR HAWKINS: Wow.

8 MR. ZABANEH: So, the errors that are made by
9 that tax preparer, for example, managed through the PTIN
10 program, the tax returns that I file are managed from an
11 error viewpoint to not meet minimum standards, and
12 therefore, I am dictated as to what additional training
13 I need to have. Initial examination, I don't believe,
14 is going to allow us to continue to measure future
15 behavior. It's going to dictate initially you have
16 minimum standards or minimum education or knowledge to
17 pass this exam. But that might be detrimental to the
18 tax preparing community because that person might take
19 that license and apply it to some of the software that
20 enables them to prepare more complicated tax returns
21 only because they feel like they are now licensed.

22 And so, I think behind the scenes, the
23 IRS or the managing body will need to use the error rate
24 attached to that PTIN or that preparer tax
25 identification number to help them manage minimum

1 standards.

2 MS. MOE: I have a comment. H&R Block and
3 Jackson Hewitt both have 12-week tax schools where we
4 teach basic income tax or our incoming new tax
5 preparers. And that pretty much covers Pub 17. And
6 that's, when I think about a minimum requirement to
7 identify someone as a preparer, that to me is a person
8 who has completed the 12-week course and has tested out
9 of that. And I think that's probably a very reasonable
10 standard from my point of view.

11 I mean, we have people who may be a tax
12 assistant and maybe they enter some information. But a
13 tax preparer is a person who should be able to do a 1040
14 with its accompanying schedules and have qualified by,
15 you know, completing some form of, you know, 60-70-hour
16 course. And maybe we don't identify that, maybe it's
17 just the testing. Maybe they don't go to class but they
18 just read the Pub 17 and they become accomplished. But
19 to me that's what I would see and my idea of what a
20 preparer would be.

21 MS. McANARNEY: And I would also add to that,
22 because I agree with that Marianne, but it is the
23 application of the tax code to the tax return. So, I
24 may be able to memorize, but then when I get to the
25 point of applying it to the tax return, I should be able

1 to demonstrate that. So, I think that probably should
2 be incorporated in some of this initial testing.

3 MS. MOE: Yes.

4 DEPUTY COMMISSIONER ERNST: So, related to I
5 guess, you know, the point that several of you represent
6 organizations or in other cases are members of
7 organizations that have set standards in order to kind
8 of qualify in if you will, I'm wondering whether you
9 know of any quality assessment systems that may have
10 been put in place or that you, you know, sort of have in
11 place that would judge whether that is working or not?
12 Is there, you know, anything objective that you know of
13 that actually says, okay, that's not working?

14 MS. MOE: Well, we, well, right now we test
15 all of our preparers before they could work. They have
16 to go through a certification test at Jackson Hewitt.
17 And it covers ethics and it covers tax law and all. And
18 based on that, whether or not they pass, it depends on
19 whether or not they are able to, you know, to certify to
20 be able to prepare. And pretty much, you know, we are
21 able to see those people who come in and say that
22 they've had experience and they try to test don't
23 necessarily do well if they have not had this background
24 training. And so, you know, we use that as our standard
25 in-house that they can't prepare unless they pass the

1 test.

2 DEPUTY COMMISSIONER ERNST: And that's sort of
3 an entry level. However after the fact? So, now
4 they're in the business, they're --

5 MS. MOE: Every year. Every year everyone has
6 to pass and be re-certified.

7 DEPUTY COMMISSIONER ERNST: Re-certified.

8 MS. MOE: Every year you have to be re-
9 certified. So, you'll have had to update and of course
10 we have classes that ascend in terms of complexity and,
11 you know, difficulty of the tax law and what we're going
12 into. But the bottom line still comes down to before
13 you, no matter how long, you have to go in and you have
14 to take this test and pass all five parts before you can
15 prepare.

16 DIRECTOR HAWKINS: Okay. Oh, I'm sorry, go
17 ahead.

18 MS. McANARNEY: I was just going to add, from
19 an H&R Block standpoint, so let's say the person has
20 been with us for a while, because we do have a separate
21 program around the first year tax preparer where we, you
22 know, we have like a mentoring system and they basically
23 have to sign off to say this first year tax professional
24 now can be on their own and put up a client. But for
25 the larger group that's been with us for a while, we

1 have continuing education classes that they have to pass
2 the test on. But in order for them then to kind of
3 graduate to different levels, they have to take an
4 additional exam. And then how we monitor it, you know,
5 we take a look at penalties and interest, but as we know
6 that's negative confirmation, it's not necessarily a
7 positive confirmation.

8 So, this is one that's really kind of
9 hard to get your arms around every year. I mean it's a
10 difficult one. But we try to make sure we have enough
11 education in place and monitoring and management and
12 leadership to make sure that we prepare the most
13 accurate tax returns.

14 DEPUTY COMMISSIONER ERNST: Mystery shopping?

15 MS. McANARNEY: That is done, yes.

16 MS. MOE: Yes, absolutely. Absolutely.

17 MS. McANARNEY: It's tough with mystery
18 shopping because sometimes it's not statistically sound
19 to apply that across the board, but we do that within
20 our company.

21 DIRECTOR HAWKINS: We've pretty much come to a
22 close for this panel. I want to thank you all for your
23 participation and it's been very, very helpful and
24 informative. I want to thank the audience for sitting
25 so patiently and listening to everyone speak to us. I

1 want to remind you, I mentioned it briefly just before
2 the break, that there are forms in your packets as well
3 as 3 x 5 cards outside. If you have the burning need to
4 say something to us in writing, please feel free to do
5 so. They will be collected and they'll be incorporated
6 into all the other data that we are collecting.

7 Thank you all very much.

8 DEPUTY COMMISSIONER ERNST: Thanks.

9 (Applause.)

10 (The meeting was adjourned at 12:50 p.m.)

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